

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION**

Latasha Holloway, et al.,

Plaintiffs,

v.

City of Virginia Beach, et al.,

Defendants.

Civil Action No. 2:18-cv-0069

Defendants' Memorandum of Law in Support of Motion for Summary Judgment

EXHIBIT EIGHT

Deposition Transcript of Dr. Allan J. Lichtman



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Transcript of Allan Lichtman

Date: September 30, 2019

Case: Holloway, et al. -v- City of Virginia Beach, et al.

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

- - - - -x

LATASHA HOLLOWAY and :
GEORGIA ALLEN, :
Plaintiffs, : Case No.:
v. : 2:18-cv-00069
:
CITY OF VIRGINIA BEACH, et al., :
Defendants. :

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Deposition of ALLAN LICHTMAN
WASHINGTON, DC
Monday, September 30, 2019
11:42 a.m.

Job No.: 266087
Pages: 1 - 246
Transcribed By: Robert Leifer, CET 970

Transcript of Allan Lichtman
Conducted on September 30, 2019

2

1 Deposition of ALLAN LICHTMAN, held at the
2 offices of:

3
4
5 CAMPAIGN LEGAL CENTER
6 1101 14th St. NW
7 Suite 400
8 Washington, DC 20005
9 (202) 736-2200
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13
14

15 Pursuant to notice, before Darrell Lowe, Notary
16 Public in and for the District of Columbia.
17
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21
22

Transcript of Allan Lichtman
Conducted on September 30, 2019

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1 A P P E A R A N C E S

2 ON BEHALF OF THE PLAINTIFFS:

3 PAUL M. HEBERT, ESQUIRE

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15 JOSEPH M. KURT, ESQUIRE

16 CITY OF VIRGINIA BEACH

17 2401 Courthouse Drive, Room 260

18 Virginia Beach, VA 23456

19 (757) 385-4531

20

21 ALSO PRESENT:

22 Nam Ngo, Videographer

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By Mr. Harris	6

E X H I B I T S

(Attached to Transcript)

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1 P R O C E E D I N G S

2 THE VIDEOGRAPHER: This is the start of
3 the videotaped deposition of Professor Allan
4 Lichtman in the matter of Holloway, et al. v. City
5 of Virginia Beach, et al. in the United States
6 District Court for the Eastern District of
7 Virginia, Case No. 2:18-cv-00069.

8 This deposition is being held at
9 Campaign Legal Center, 1104 14th Street Northwest,
10 Suite 400, Washington, DC 20005 on September 30,
11 2019, at approximately 11:41 a.m.

12 My name is Nam Ngo from Planet Depos,
13 and I'm the legal video specialist. The court
14 reporter is Darrell Lowe representing Planet
15 Depos. Would counsel please introduce themselves?

16 MR. HARRIS: My name is Gerald Harris
17 for the defendants in this case.

18 MR. BOYNTON: My name is Chris Boynton
19 for the defendants in this case.

20 MR. KURT: Joseph Kurt for the
21 defendants.

22 MR. HEBERT: Gerald Hebert for the

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1 plaintiffs.

2 MS. HARLESS: Annabelle Harless for the
3 plaintiffs.

4 MR. LAMAR: Christopher Lamar for the
5 plaintiffs.

6 MR. ZALESIN: Jeff Zalesin, law clerk
7 for the plaintiffs.

8 THE VIDEOGRAPHER: Would the court
9 reporter please swear in the witness.
10 Whereupon,

11 ALLAN LICHTMAN
12 being first duly sworn or affirmed to testify to
13 the truth, the whole truth, and nothing but the
14 truth, was examined and testified as follows:

15 EXAMINATION BY COUNSEL FOR THE DEFENDANTS
16 BY MR. HARRIS:

17 Q Dr. Lichtman, my name is Jerry Harris.
18 I represent the defendants in this case, as we've
19 just discussed. We're starting a little behind
20 schedule today. It's now 11:45. I thank you for
21 your patience this morning. I'll do my best to
22 get us right through what we need to today.

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1 A That would be great.

2 Q I understand you've been deposed
3 previously?

4 A Correct.

5 Q I think your report indicated at least
6 90 times?

7 A I don't know if I've been deposed 90
8 times but probably dozens of times.

9 Q Okay.

10 A I haven't been deposed in every case.

11 Q When I conduct depositions, there's a
12 few general ground rules that I like to use to
13 make our time go together. I'm going to go over
14 those ground rules and hope that they are
15 agreeable to you. If they're not, please let me
16 know.

17 The first is I'm going to assume that
18 you understand the question that I've asked.
19 Invariably, it may be unclear to you or you may
20 not completely understand my question. If that is
21 the case, please ask me to clarify, because I will
22 assume that, if you've answered the question, you

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1 understood it as I've asked it.

2 The other thing -- you're reminded that
3 you're under oath, so I'm going to assume all the
4 answers you have provided today are truthful and
5 to the best of your knowledge with the information
6 you have as we sit here today.

7 As a matter of convenience to you,
8 should you have any need for a restroom break or a
9 personal break, please just let me know, and we'll
10 stop the deposition at that moment. The only
11 request I'll have is that we finish whatever
12 question that we're on and that you take the time
13 that you may need for that personal rest or
14 whatever the case may be.

15 Does that all sound agreeable to you?

16 A Yes.

17 Q Okay.

18 THE REPORTER: Before we get started,
19 just by virtue of having to substitute in a
20 different court reporter than we started, I just
21 want to make sure there's no objection to the
22 deposition being taken in a way that does not

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1 immediately record it by stenographic means but by
2 later transcription.

3 MR. HEBERT: No objection.

4 THE REPORTER: Thank you, sir.

5 MR. HARRIS: Thank you. Thank you for
6 bringing that up.

7 (Deposition Exhibits 1 and 2 were marked
8 and were attached to the transcript.)

9 Q Dr. Lichtman, I've marked the reports I
10 will offer to you that we were provided as your
11 initial report, dated July 15, 2019, and your
12 rebuttal report, dated August 26, 2019.

13 The initial report I've marked as
14 Exhibit 1; the rebuttal report I've marked as
15 Exhibit 2. During our deposition together today,
16 I'm going to be referring to these reports. I'll
17 ask you just to look through those and confirm
18 that those are, in fact, your reports in this
19 case.

20 A Happy to do that.

21 Q Thank you.

22 A Just give me a little bit of time.

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1 Q I understand.

2 A Won't take long.

3 This initial report looks accurate and
4 complete. I'll look at the rebuttal report now.
5 It won't take long. This also looks accurate and
6 complete in terms of what I have submitted.

7 Q Thank you, sir. Referring specifically
8 to Exhibit 1, the initial expert report dated July
9 15, 2019, did you write this report entirely
10 yourself?

11 A Yes.

12 Q Did you copy any parts of this report
13 from any prior reports you may have submitted to
14 courts or other cases?

15 A I may have copied parts of
16 qualifications, but a lot of that doesn't change.
17 Some of it probably was added to -- but not the
18 substance of the report.

19 Q Did you have any help from office
20 assistants or office staff in preparing this
21 report?

22 A No.

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1 Q Did you have any help from graduate
2 students or other university students in preparing
3 this report?

4 A I think I might have. I'm not sure
5 because I do a lot of reports. The only thing I
6 would have had would have been a proofreading from
7 one of my grad students who I use for
8 proofreading. Other than that, nothing
9 substantive.

10 Q Do you ever use graduate students -- I
11 shouldn't say you ever.

12 Have you used graduate students in this
13 case to conduct any of your preliminary research
14 or underlying research data that informs your
15 opinions in this case?

16 A No. I did it all myself.

17 Q I know you went through the July 15th
18 report fairly quickly to confirm that it was
19 accurate and complete.

20 Do you have any opinions that were
21 rendered in this July 15, 2019, report that you
22 need to update before we go any further in your

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1 deposition?

2 A No. I haven't changed any of my
3 opinions.

4 Q Have you had the opportunity to review
5 the reports of Mr. Fairfax and Dr. Spencer in this
6 case?

7 A I certainly have reviewed the reports of
8 Dr. Spencer; briefly the report of Dr. Fairfax.
9 Not in depth because, as I think I mentioned in my
10 rebuttal report, I have not been involved in the
11 details of the demographic analysis or the drawing
12 of illustrative plans or anything like that.

13 Q Are you aware that Dr. -- excuse me.
14 Are you aware that Mr. Fairfax submitted an
15 initial report and a rebuttal report in this case?

16 A I believe that's right.

17 Q Have you had an opportunity to at least
18 read both of those reports?

19 A Not in depth. I might have just looked
20 at them briefly but -- yeah, I did look at them,
21 but as I said, not analyzing them in depth the way
22 I've done with other reports.

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1 Q When you looked at the reports of
2 Mr. Fairfax, were there any opinions of his that
3 you disagreed with?

4 A Nothing that struck me that way, no.

5 Q You also indicated that you have had an
6 opportunity to read the reports of Dr. Spencer --
7 that is, his initial report and his rebuttal
8 report?

9 A That's correct.

10 Q And in reading Dr. Spencer's initial
11 report, did you agree with the conclusions he
12 reached in his initial report?

13 A Again, I didn't get into depth in the
14 Gingles factors because that was not my brief.
15 But in terms of my brief, which was there was
16 racial polarization in Virginia Beach elections, I
17 agreed.

18 Q And as to Dr. Spencer's rebuttal report,
19 do you concur or are you in agreement with his
20 conclusions that are contained in that report?

21 A Again, to the extent that my brief was
22 looking at racial polarization, yes.

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1 Q Did you work with Dr. Spencer or
2 Mr. Fairfax in preparation of their reports?

3 A Never spoken to either gentlemen or had
4 any correspondence with either gentlemen.

5 Q Other than discussions with legal
6 counsel for the Campaign Legal Center, was there
7 anyone else involved in the preparation of your
8 reports?

9 A No.

10 Q Does your report contain all the facts
11 and data you considered in forming your opinions?

12 A Yes; although, some new things have
13 emerged since I produced my two reports.

14 Q We'll get to those later; but as of July
15 15th, when you rendered this Exhibit 1 report, all
16 the facts or data you considered at that time are
17 contained or referenced in this report?

18 A Essentially, yes; but, of course,
19 whenever you write a report, the totality of your
20 knowledge and your experience goes into it.

21 Q I will refer to August 26, 2019,
22 Exhibit 2.

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1 Same question. Does your report as of
2 August 26, 2019, contain all the facts or data you
3 had considered at that point in time?

4 A Yes; although, some new things have come
5 to light since. And, again, my whole totality of
6 my experiences obviously informs everything I
7 write.

8 Q Have you had an opportunity to review
9 the plaintiff's discovery responses to defense's
10 discovery in preparation of your reports?

11 A Run that by me again.

12 Q Have you had the opportunity to review
13 the plaintiff's -- that is my Ms. Holloway and
14 Ms. Allen's responses -- to the defense's
15 discovery request?

16 A It's possible that pieces of that were
17 sent to me, but I don't recall reviewing that in
18 its totality, no.

19 Q And have you had an opportunity to
20 review the defendant's discovery responses to the
21 plaintiffs in the preparation of your report?

22 A I've looked at some of that. I'm not

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1 sure I've looked at everything.

2 Q Did you review the amended complaint in
3 preparation of your report?

4 A I believe I did way back when.

5 Q Did you have any involvement in the
6 preparation or drafting of the amended complaint?

7 A No.

8 Q You mentioned that you had certain
9 changes in your opinions or new information -- I
10 should say -- I think that mischaracterizes your
11 testimony.

12 A You did.

13 Q You had indicated that there were some
14 new things that had come to light.

15 Without going into specifically what
16 they are, did those new things that came to light
17 change your opinion that you've rendered in this
18 case?

19 A They strengthened them.

20 Q So the change to your opinion is you've
21 become more certain, I'll say, based on new
22 information that you received?

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1 A Yes; although, I was pretty -- I was
2 quite certain when I produced these reports. This
3 new information just added to that.

4 Q If I'd stated it in a different way, it
5 confirms what you already opined on?

6 A Yes.

7 Q Do you expect to file a supplemental
8 report based on that new information?

9 A No.

10 Q Have you been asked to file a
11 supplemental report based on this new information?

12 A No. Just one small correction to my
13 rebuttal report, and I've prepared a couple of
14 pages reflecting that.

15 Q Is that something that you've provided
16 to your counsel?

17 A Yes. And if I could interrupt, I have
18 copies, and I'm happy to share it with you now or
19 when you get to the rebuttal report.

20 Q Why don't you share it now, and then we
21 can digest at a break and --

22 A Okay.

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1 MR. BOYNTON: It's very small. It won't
2 take you much to figure it out.

3 Q For the record, you're handing me two
4 pages that appears to be Table R3 and Chart R3.

5 A That is correct.

6 Q Okay. We'll set those aside for now
7 and, like Mr. Boynton mentioned, we'll look at
8 those at a break and have you come back to it.

9 A Sure. Not a problem.

10 Q Other than the new information that you
11 were provided and the supplement or obviously the
12 updated charts that were provided, are there any
13 other information that you've had since submitting
14 these reports that either strengthen your opinions
15 or change your opinions?

16 A Yes.

17 Q What are those things?

18 A I've since read an article just recently
19 published in NPR suggesting that there is now an
20 investigation ongoing about whether a hostile work
21 environment in Virginia Beach with respect to
22 minorities may have contributed to the horrific

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1 mass shooting that we all so lament.

2 And in pursuit of that new information,
3 which came out obviously well after I did my
4 reports, I looked at some information regarding to
5 former City Manager Hansen, who had resigned,
6 also, I believe subsequent to the preparation of
7 my report.

8 And I did uncover racially insensitive
9 remarks and a racially insensitive email chain.
10 And I looked at his deposition, and I didn't see
11 much racial sensitivity there, to tell you the
12 truth.

13 Q Let's start back with the NPR article.

14 Do you have the source cite for that NPR
15 article off the top of your head?

16 A No. But if you want, I can get it for
17 you and send it to you. It's easy to find on a
18 Google search, and that's not the only article
19 relating. It's pretty well known within the
20 press.

21 Q Do you intend to rely on that article as
22 part of your opinions you're intending to render

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1 in this case?

2 A Well, since it was brought up here, I
3 might bring it up.

4 Q Respectfully, Doctor, you brought it up
5 as new information that you were able to find
6 since your rebuttal report. And I'm asking you
7 whether you intend to rely on that if called to
8 testify at trial.

9 A It's possible certainly. I don't know
10 what exactly I'm going to say in testimony this
11 far in advance of the trial, which you understand
12 has even been postponed beyond January, but it's
13 possible.

14 As I said, this all came out subsequent
15 to my reports, and it's relevant to my reports.

16 Q That being the case, we would like a
17 copy of the article he's referring to
18 specifically.

19 MR. HEBERT: As he said, he'll provide
20 that to me, and I will provide it to you promptly.

21 MR. HARRIS: Great.

22 Q The article that you referenced from NPR

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1 discuss a potentially hostile or toxic work
2 environment in the City of Virginia Beach.

3 Have you formed an opinion as to whether
4 there is a hostile or toxic work environment in
5 the City of Virginia Beach?

6 A Not a final opinion, but I certainly
7 think there is a -- based on the article -- I
8 certainly wouldn't draw an opinion just based on
9 the article; but having looked at remarks and
10 email chains from Mr. Hansen, having seen his
11 resignation, having now read his deposition, I
12 think there's some reason to believe that.

13 Q Which racially insensitive remarks are
14 you referring to?

15 A His being part of an email chain talking
16 about five percenters being those involved in this
17 predominantly minority demonstration; his
18 commenting about, you know, if you color yourself
19 in a certain way, that is going to protect you
20 from being stopped.

21 These are pretty -- you know, in this
22 day and age, those are pretty blatant racially

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1 insensitive remarks. And even Hansen admitted he
2 made a poor choice of words, you know, that this
3 could be interpreted as racially insensitive in
4 this particular climate.

5 I think it goes well beyond that. These
6 are pretty shocking things to come out of a city
7 manager's mouth and to be involved with a city
8 manager in an email chain.

9 Q Do you believe the city manager, Dave
10 Hansen, to be a racist?

11 A I'm not going to comment on that. I do
12 believe he's racially insensitive.

13 Q What does the term five percenter mean
14 to you?

15 A It means, you know, there's obviously --
16 this is an obscure reference to the five percent
17 nation coming out of the Islamic black Muslim
18 movement, but clearly it refers to people on the
19 margin. Five percenters means you're way out of
20 the mainstream.

21 And he tried to explain it away as kind
22 of just bland assessment of percentages. Well,

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1 then you would say percentages. You wouldn't say
2 five percenters. And he admitted -- and it was
3 clear from the response to it -- that African
4 Americans took offense, and I think rightly so.

5 You know, I've been studying these
6 matters for well-on more than 50 years.

7 Q Did Dave Hansen make the five percenters
8 remark?

9 A No. That was part of an email chain
10 that he was involved in and then tried to explain
11 it away as not necessarily being racially
12 insensitive. He did himself make the other
13 remark, then resigned his position, I believe,
14 fairly recently.

15 Q As to the five percenter remark in the
16 email chain, in any following emails, did you see
17 Dave Hansen encouraging or validating that
18 comment?

19 A No. I didn't see him questioning it,
20 criticizing it; I just saw him participating in
21 what I thought was a pretty outrageous email
22 chain. And then I saw him make this other

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1 outrageous racially insensitive statement.

2 And then combine that with the
3 investigation that's now ongoing, there's
4 certainly reason to believe there are issues here.
5 And that fits with some of the other information
6 that's in my report.

7 Q The other racially insensitive remark
8 you referenced, I heard you say color your face.

9 Can you tell me what you know about that
10 remark when it was made?

11 A I think it was made -- I'm trying to
12 remember exactly. We can refer to the deposition.
13 But I think it was made during a monitoring of a
14 festival in Virginia Beach in that context.

15 Q Do you know anything else about the
16 context of the comment about coloring your face?

17 A Well, I think it had to do with
18 policing. It was pretty clear. Because they were
19 talking about being stopped by the police.

20 Q Are you aware as to whether that was
21 related to minorities versus non-minorities?

22 A I think it's pretty clear, when you're

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1 talking about coloring yourself, you're talking
2 about minorities. That's pretty unmistakable and
3 pretty amazing in this day and age to make that
4 kind of remark.

5 Q It sounds like you don't have much doubt
6 that that was the subtext of his comment.

7 A I do not have much doubt about that.
8 And then, you know, that was part of the
9 controversy that led to his resignation.

10 Q What else do you believe led to his
11 resignation?

12 A I think there were issues -- I mean, I
13 don't know exactly what led to his resignation,
14 but it came shortly after these controversies
15 about racially insensitive remarks emerged in the
16 context of, you know, race being an especially
17 sensitive issue in the State of Virginia right
18 now.

19 And I also read complaints about old-boy
20 networks and preferential awarding of city
21 contracts, which does accord with information in
22 my report about great disparities, particularly

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1 with respect to African Americans and Hispanics in
2 the awarding of city contracts. Complaints by
3 Bruce Smith, you know, former NFL Hall of Fame
4 player and developer in Virginia Beach. This was
5 a lively issue there.

6 Q In reference to the investigation of the
7 May 31, 2019, shooting, you're familiar with the
8 agency of Hillard Heintze, who's responsible for
9 that independent investigation?

10 A I'm not familiar with it, but I looked
11 them up, and they seem to be a -- you know, a
12 pretty respectable company. I didn't notice any
13 issues with them.

14 Q When you looked them up, did you review
15 the scope of their investigation in the City of
16 Virginia Beach?

17 A I don't think, when I looked it up, it
18 had that information included. Probably their --
19 it may be public somewhere. I'll look for it.
20 But I didn't -- I didn't see it in the time I had.

21 Q As you sit here today, what do you
22 understand the scope of their investigation to be?

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1 A I understand the scope of their
2 investigation would be whether there was a hostile
3 environment for minorities in terms of how
4 minorities are treated, in terms of promotions and
5 other prerequisites within the city government of
6 Virginia Beach. That's my understanding.

7 Q Given all this information that we
8 discussed now that you were able to determine or
9 investigate following your rebuttal report, is
10 it -- I want to be clear, it's still not your
11 intention to file a supplemental or another report
12 in this case?

13 MR. HEBERT: If I can just state for the
14 record, the decision about whether he will file
15 any supplemental reports will be made by counsel.

16 A Yeah. I never know what counsel may or
17 may not ask me to do. Having been in scores of
18 cases, you can't predict in advance what counsel
19 may ask you to do.

20 MR. HEBERT: But I will tell you, Jerry,
21 we don't envision that at this moment.

22 Q Dr. Lichtman, what did you do to prepare

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1 for today's deposition?

2 A Just talked about it with counsel.

3 That's all.

4 Q Did you review your reports before the
5 deposition today?

6 A Yeah, briefly.

7 Q Did you review the report of Dr. Spencer
8 before the deposition today?

9 A I reviewed the reports of Dr. Spencer
10 before; but I also reviewed parts of it prior,
11 just prior to this deposition, particularly the
12 analyses of racially polarized -- I mean the
13 tables in particular, not the verbiage or anything
14 like that.

15 Q When you mention the tables, there were
16 tables included in his initial report and his
17 rebuttal report.

18 Are you including both reports when you
19 say you reviewed his table?

20 A Yeah. And, in fact, the slight
21 correction I gave you, update to my rebuttal
22 report, was alerted to me by Spencer's rebuttal

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1 report.

2 Q Tell me what you mean by that. I'm not
3 sure I'm following.

4 A Yeah. It's a very small correction in
5 that one of the black candidates who was not
6 listed as a candidate of choice was, in fact, the
7 second candidate of choice in a two-seat, at-large
8 election.

9 That was alerted to me when I saw that
10 Dr. Spencer had made some updates to his initial
11 analysis for 2014 because two seats were up that
12 apparently had no ability to cast two votes.
13 That's the only change.

14 Q We've mentioned an NPR article already.
15 Did you review any news articles or
16 other periodicals specifically for preparation
17 today?

18 A You know, the NPR article sticks in my
19 head, but that wasn't the only article about this
20 controversy in Virginia Beach. I think there was
21 others.

22 Q Let's define, when you say this

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1 controversy, are you saying specifically to the
2 Hillard Heintze independent investigation?

3 A Yes. I don't think I reviewed any other
4 articles that I hadn't already reviewed for the
5 preparation of my reports.

6 Q Let me try phrasing it in an easier way.

7 A Okay.

8 Q The reports that you've cited include
9 several footnotes with newspaper articles.

10 My question to you, sir, is did you pull
11 any of those news articles back out and read them
12 again today for your deposition?

13 A No.

14 Q Dr. Lichtman, when I started today, I
15 had made an errant reference to 90 prior
16 depositions. You said, perhaps, dozens of times.

17 Can you tell me how many times you've
18 been retained as an expert as it relates to voting
19 rights litigation?

20 A I've never counted, but it could be
21 upwards of 90. I think I -- we passed on a table
22 of cases to you.

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1 Q Well, we'll get to that in one second.

2 Let me step back.

3 I understand that you are a
4 distinguished professor of history at American
5 University in Washington, DC, correct?

6 A Yes.

7 Q How long have you held that position?

8 A I started at American University in
9 1973. I was appointed full professor -- I'm
10 trying to remember -- '79, '80 -- around there.
11 And I was appointed distinguished professor, which
12 is the highest faculty rank only held by very few,
13 in 2011.

14 Q If I understand your testimony, then,
15 you've essentially worked continuously at the --
16 at the American University here in Washington, DC
17 since 1973?

18 A Hard to believe, but true.

19 Q Congratulations.

20 A Thank you. I started when I was nine.

21 Q I believe that.

22 MR. HEBERT: You're under oath,

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1 remember.

2 THE WITNESS: Oh, no.

3 Q When did you first begin working as a
4 retained expert in voting rights cases?

5 A Probably around 1980 with respect to --
6 I think the case was Anderson v. Celebrezze that
7 involved ballot access for third parties. John
8 Anderson, of course, was the independent
9 presidential candidate in 1980. And I did a
10 report on the role of third parties in American
11 political history.

12 I did not testify; I was not deposed in
13 that case.

14 Q Would it be fair to say that you have
15 over 30 years of experience testifying as an
16 expert in Voting Rights Act cases?

17 A Yes.

18 Q During that period of time have you ever
19 been excluded as an expert by any court?

20 A No. I once had a Daubert motion filed,
21 and it was rejected.

22 Q Have you ever had a court explicitly

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1 refute or refuse to agree with any of your
2 findings in a written opinion?

3 A Of course. You can't be involved in
4 more than 90 cases and not have every judge every
5 time agree with you.

6 Q Do any of those cases stick out in your
7 mind?

8 A Well, the one that sticks out in my mind
9 because it was recent and very important was North
10 Carolina NAACP v. McCrory in which the district
11 court disagreed with my analyses and opinions, but
12 all of that was overturned unanimously by the 4th
13 Circuit, which agreed with my analyses and
14 opinions down the line.

15 Q Can you spell the name of that
16 defendant, by chance?

17 A McCrory, M-C-C-R-O-R-Y, former governor
18 of North Carolina.

19 Q Any other cases that you can recall
20 where a district court or appellate court
21 specifically refuted your opinion or your
22 findings?

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1 A I'm sure there were, certainly in part,
2 but that's the one that really stands out.

3 Q What do you do to stay up to date on the
4 most recent or, I'll say, cutting edge political
5 science research methods?

6 A Just read, and I also do a lot of
7 writing. And in the course of my writings, I
8 utilize methodologies. But I'm not a political
9 scientist. I am a political historian. And I
10 have written in my own right quite a bit on
11 methodologies for analyzing voting behavior and
12 have developed some methodologies for it.

13 Q I want to --

14 A One other thing --

15 Q I'm sorry?

16 A And, of course, in the course of doing
17 litigation, you engage with methodologies.

18 Q For purposes of racially polarized
19 voting analysis, are you familiar with the most
20 commonly employed methodologies?

21 A I think there are three methodologies
22 and the same ones that have been discussed in this

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1 case. I don't like to call it homogeneous
2 precinct, I call it extreme case analysis,
3 ecological regression, and ecological inference.

4 Q Based on your experience as an expert
5 witness, those are the three most commonly
6 employed methodologies?

7 A That's correct. And I believe two of
8 them, ecological regression and extreme case
9 analysis -- certainly ecological regression --
10 were the methodologies validated by the Supreme
11 Court in its landmark decision of Thornburg v.
12 Gingles in the 1980s.

13 Q I've heard of that one.

14 A Yeah. And the Supreme Court also
15 accepted my methodology in the LULAC case. That
16 was the big congressional redistributing case
17 coming out of Texas and --

18 Q I apologize for interrupting. Before
19 you go too far away, will you spell LULAC for me?

20 A Certainly. I think it's all caps,
21 L-U-L-A-C.

22 And Justice Kennedy's opinion in that

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1 case cited my statistical work more than once, I
2 believe, in striking down the one district that it
3 did strike down in the congressional redistricting
4 plan in the first decade of the 21st century.

5 Q The methodology you're referring to in
6 the LULAC case, is that different than ecological
7 regression or ecological inference?

8 A It was ecological regression.

9 Q Do you prefer ecological regression to
10 ecological inference?

11 A I think they both generally give you the
12 same results, but I do prefer ecological
13 regression.

14 Q Why is that?

15 A First of all, it has been validated by
16 the United States Supreme Court. I'm not aware of
17 ecological inference being validated by the United
18 States Supreme Court. It's easy to explain. You
19 can have pictures, you know, of scatter plots on
20 which ecological regression is based.

21 I have yet to see anyone explain
22 ecological inference in a way that a court can

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1 understand. And ecological inference will give
2 you answers no matter what. Ecological
3 regression, which I always check, can give you
4 warning signs when you really shouldn't be getting
5 answers.

6 And ecological inference, you know, can
7 be hard to use if you're not truly an expert.

8 Q Well --

9 A But, again, I have not seen a litigation
10 where it would turn on the difference between the
11 two of them. Because they don't always give you
12 exactly the same answers, but they certainly give
13 you answers in the ballpark.

14 Q I heard you say something that I'm going
15 to agree with, that sometimes these are difficult
16 to understand when you're not an expert. And I
17 will confess to you that I am not an expert in
18 this area particularly.

19 But you used a phrase, warning signs, as
20 important between your distinction of the ER
21 methodology --

22 A Right.

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1 Q -- and the EI methodology.

2 Can you tell me a little bit about those
3 warning signs?

4 A Yeah. You know, as you saw in one of my
5 reports, I produced what's known as scatter plots,
6 which is a plotting of whatever variable you're
7 interested in -- it could be turnout, it could be
8 the votes for candidates -- against the
9 demographic composition of the precincts.

10 And if there is a relationship, you'll
11 see either a linear upward slope or a linear
12 downward slope. It's those scatter plots that are
13 the basis of the ecological regression
14 methodology.

15 So the truth is, while I might not be
16 able to explain to you ecological regression or I
17 think I can, you can see the scatter plots. You
18 can see what the ecological regression is based --
19 you can't see anything for ecological inference.
20 It's essentially a black box.

21 You can also check ecological regression
22 with an extreme case; and those can be, you know,

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1 the warning signs, you know, if there's something
2 disparate between the results and the scatter
3 plots and the homogeneous precinct. It will tell
4 you that.

5 Also, by looking at the scatter plots,
6 you can see whether or not there is enough
7 variation in your analysis. For example, you
8 might say, well, I'd love to do an analysis of
9 voting behavior of Hispanics. But Hispanics don't
10 vary that much across precincts. You don't have,
11 you know, 60 percent and 10 percent.

12 And that would be a warning sign that
13 you're not going to get a particularly reliable
14 analysis by trying to isolate. You put it into
15 EI, EI will give you an answer, which may or may
16 not be right for something like that.

17 Q You had mentioned the homogeneous
18 precinct, and we -- you also referred to it as
19 extreme case. So using your vernacular, I'll call
20 it extreme case during the deposition.

21 A Yeah. I have a reason I don't call
22 it -- because they're not 100 percent. They're

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1 not totally homogeneous.

2 Q When you refer to extreme case, do you
3 put a percentile on that?

4 A You know, I'd like to get at 90 percent
5 for whatever racial group I'm looking at.
6 Sometimes you can't get there and you've got to go
7 down to 80 percent.

8 But the truth is, the extreme case
9 analysis is also fairly evident in the visuals.
10 You know, Bernard -- Dr. Bernard Grofman, who was
11 the expert in the Thornburg v. Gingles case called
12 it the interocular test. You can see things with
13 your own two eyes. And that's why I like scatter
14 plots, and that's why I look at them.

15 Q Can you give me an example of one of
16 these cases where you would -- and I'm referring
17 purely to a hypothetical case now -- where you
18 would see something that you would categorize as a
19 warning sign as between extreme case, ER, and EI?

20 A Well, I'm not sure you see a warning
21 sign between them; but, rather, the warning sign
22 is maybe there isn't enough variation in the

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1 demographic variable you're looking at to isolate
2 that particular demographic group and come up with
3 an estimate that isn't very noisy. That's -- a
4 scatter plot will do that for you.

5 Q Tell me what the word noisy means to you
6 from a methodological perspective.

7 A Yeah. I was trying to keep it simple.
8 It means it can be a big error margin of what
9 you're looking at. It's not going to be totally
10 reliable.

11 Q For purposes of statistical analysis,
12 particularly in EI and ER, is there a percentile
13 for what is reliable and what is not reliable?

14 A No. There isn't, you know, a fine line;
15 but when you've been doing this long enough, you
16 get a pretty good sense of -- you know, if the
17 variation in your variable is between 0 and
18 20 percent, you know isolating that particular
19 variable is going to be an issue.

20 Q So is there a certain statistical
21 variance that you would identify as a warning sign
22 in these cases?

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1 A Again, there's no hard and fast line,
2 but you would certainly like to get at least on
3 either side close to a majority.

4 Q I want to go back to the word noisy.
5 You had said big margin in response to
6 that, and I want to make sure I understand what
7 you mean by big error margin.

8 A That the estimate is just not going to
9 be a reliable estimate in terms of specifying the
10 behavior of that group. And that makes sense. If
11 you think about it, if the highest percentage of
12 the group is 12 percent, distinguishing that group
13 from the 88 percent in the top precinct is going
14 to be difficult.

15 Q And in some cases can it be so
16 unreliable that it would be improper to draw
17 conclusions based on those margins?

18 A It could be.

19 Q Is there a number, a percentage of the
20 margin of error that you would say conclusively is
21 unreliable to draw conclusions?

22 A No. Because, you know, even with large

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1 margins of error, sometimes you could say
2 something about the behavior. And there is a
3 methodology, for example, that Dr. Spencer used to
4 test differences among different groups, even when
5 the margins of error can be large for those
6 groups.

7 Q You've talked some about ecological
8 regression, ecological inference, and now the
9 extreme case analysis.

10 I want to point your attention in your
11 report to page 2.

12 A Which report?

13 Q The first report, I'm sorry, Exhibit 1.

14 A I'm there.

15 Q You write a statement of purpose here --
16 and I read this essentially to be your -- the
17 scope of your opinion in this case.

18 Am I correct in that assumption that
19 this is the scope of your opinion?

20 A The Senate Factors, yes, which are
21 pretty broad but --

22 Q Yes, sir. For purposes of ecological

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1 inference and ecological regression, where do you
2 see those analyses fitting into Senate Factors?

3 A Certainly fitting in racially polarized
4 voting and certainly fitting in on the lingering
5 effects of discrimination.

6 Q In preparing your report, did you rely
7 on the data presented by Dr. Spencer?

8 A Correct. I did not do -- well, for this
9 report -- okay. We're only focusing on this
10 report. I did not do for this report my own
11 independent statistical analysis of racially
12 polarized voting on turnout.

13 Q Did you do any independent statistical
14 analysis on any extreme case precincts in Virginia
15 Beach?

16 A I think I just said for this report I
17 did not do any of my own independent statistical
18 analysis of racially polarized voting.

19 Q And would I be correct to say that you
20 do not intend to offer an opinion on the
21 satisfaction of Gingles prongs 1, 2, or 3 based on
22 this report?

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1 MR. HEBERT: Object to the form of the
2 question.

3 A I've got to think about that. I
4 certainly --

5 Q Let me try to rephrase the question.

6 A Yeah.

7 Q I do not read in the scope of your
8 statement of purpose that you are opining on
9 Gingles prong 1 in this report; is that correct?

10 A That's correct.

11 Q And I should clarify for the record,
12 when I use the phrase Gingles prong 1, you
13 understand I'm referring to the geographic
14 compactness requirement as set forth in Thornburg
15 v. Gingles?

16 A Yes. But I presume you're not referring
17 to any particular legal interpretation of it, just
18 that it refers to drawing of districts, not what's
19 required or anything like that.

20 Q Yeah. I -- Dr. Lichtman, I'm trying to
21 determine where the scope of your --

22 A Gotcha.

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1 Q -- opinions begin and end on this point,
2 not whether we agree or disagree on what prong 1
3 means.

4 A No. I don't think this report addresses
5 that.

6 Q For Gingles prong 2, are you offering an
7 opinion in this report as to whether prong 2 is
8 satisfied?

9 A Not to the extent that I talk
10 specifically about prong 2 but to the extent prong
11 2 is implicated in racially polarized voting,
12 which I do address in this report. Then it would
13 be relevant to prong 2.

14 Q For prong 3, are you opining
15 specifically in this report as to whether Gingles
16 prong 3 is satisfied?

17 A Not specifically but indirectly to the
18 extent racially polarized voting bears on that.

19 Q Can you tell me what you identify as the
20 component parts of racially polarized voting?

21 A Yes. Racially polarized voting exists
22 when -- let's just simplify it to two racial

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1 groups, but it need not be limited to that -- when
2 two racial groups differ in their choices of
3 candidates, say, blacks and whites.

4 And then you can measure the degree of
5 racially polarized voting by looking at the degree
6 of difference in the choices of candidates of
7 those two racial groups.

8 Q Can there be racially polarized voting
9 between minority groups?

10 A There can be racially polarized voting
11 between any group, however you define it. It's an
12 empirical question.

13 Q Have you written any publications or
14 journals in reference to racially polarized
15 voting?

16 A Certainly.

17 Q Can you give me an idea of how many?

18 A Certainly several.

19 Q What would you say your most recent
20 article relating to or your most recent
21 publication relating to racially polarized voting
22 was?

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1 A It's been some time since I addressed
2 this. I'd have to review my CV. I certainly
3 addressed it in my evaluation review article,
4 which I think is the early 1990s.

5 And there may be something subsequent to
6 that. And I certainly would have touched on it in
7 my very recent book on voting rights. It's called
8 The Embattled Vote in America: From the Founding
9 to the Present. That was just September 2018.

10 Q Have you also published or written in
11 reference to political cohesiveness of minority
12 groups?

13 A Probably in the context of racially
14 polarized voting, but I can't recall an article,
15 per se, on that.

16 Q And have you published any writings or
17 journals in reference to white/black voting as it
18 relates to racially polarized voting?

19 A Again, that would have been encompassed,
20 but I don't recall writing an article on that per
21 se.

22 Q Have you written any articles related to

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1 political coalitions or coalition districts?

2 A Not that I can recall. But, again, I
3 may have touched on that. But I don't recall
4 writing an article specifically on that. But I'm
5 sure I've touched on it in other publications.

6 Q Have you published or written regarding
7 influence districts?

8 A Again, not specifically, but I'm sure --
9 I'm not sure, but I may well have touched on that
10 in other publications.

11 Q And any publications or writings
12 referencing specifically crossover districts?

13 A Again, not per se, but it's certainly
14 possible that was referenced in other pieces.

15 Q We've talked some about your 30-year
16 history as a consulting expert in these types of
17 cases. I want to move your attention closer to
18 the most recent four years.

19 In the last four years, can you tell me
20 approximately how many times you've been retained
21 as an expert and offered written or oral
22 testimony?

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1 A I can't tell you how many. I guess --
2 it's hard to say exactly. 10? 12? But if we
3 reviewed my table of cases, we can draw a line
4 where the last four years were.

5 Q You understand that, when a report is
6 submitted, it is to include a table of cases and
7 an updated CV?

8 A Yes.

9 Q And it's your normal practice to include
10 that?

11 A Yes.

12 Q And you've indicated that you've
13 testified at least ten times in the last --
14 approximately -- let's just say approximately ten
15 times in the last four years?

16 A Very approximately.

17 Q Do you recall whether those approximate
18 ten times were more often for the plaintiff or the
19 defendant?

20 A They were both. I can think of several
21 cases on both sides -- or on either side would be
22 more accurate.

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1 Q And of those approximate ten cases, were
2 any of them in Virginia?

3 A One was in Virginia. I don't know
4 exactly whether it was in the four-year time frame
5 or not, but it was fairly recently. It may not be
6 exactly in the four-year time frame -- I don't
7 recall -- but it's right around there.

8 Q Tell me what case you're referring to,
9 please.

10 A That was the voter ID case in Virginia.

11 Q Do you recall the names of the parties
12 in that case?

13 A I think Lee was the plaintiff, Lee v.
14 Virginia State Board of Elections, if I remember
15 correctly.

16 Q You've been received as an expert in
17 federal courts in Virginia before?

18 A Certainly in that one. I think some --
19 a long time ago I did a case involving
20 redistricting in Virginia. So at least a couple
21 of times.

22 Q Do you recall the name of that

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1 redistricting case?

2 A I have no idea. It was a very long time
3 ago.

4 Q Do you recall where it may have been in
5 Virginia?

6 A I have no recollection.

7 Q And do you know if the 4th Circuit has
8 ever cited you approvingly?

9 A Yes.

10 Q Okay. Do you recall which cases those
11 might have been?

12 A Just recently in North Carolina NAACP v.
13 McCrory. They didn't cite me specifically, but
14 they cited testimony.

15 Q And prior to that, do you recall any
16 other cases where the 4th Circuit has cited your
17 work approvingly?

18 A I don't recall.

19 Q Dr. Lichtman, I want to turn your
20 attention to page 3 of Exhibit 1, your initial
21 report.

22 A Certainly.

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1 Q The last paragraph there indicates that
2 you're being compensated for your work in this
3 matter at a rate of \$350 per hour.

4 Is that still accurate?

5 A Yes.

6 Q That includes your preparing of reports
7 and also your time to testify either at --

8 A Yes.

9 Q -- sorry I interrupted you -- either at
10 deposition or at trial?

11 A Yes.

12 Q You indicate in the next sentence that
13 you have attached an updated CV and a table of
14 cases which I have provided written or oral
15 testimony?

16 A Yes.

17 Q I do not see that CV or table of cases
18 as attached to this report.

19 Can you identify in that exhibit if it's
20 been attached?

21 A I don't see it either. I sent it to the
22 attorneys to pass on to you.

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1 Q This updated table of cases, how many
2 cases would you say are on that list?

3 A 90-plus.

4 Q And they include all of the cases in
5 which you've provided written or oral testimony?

6 A From 1980 on.

7 Q When you say written testimony, you're
8 referring to reports that you've provided to
9 either plaintiff's or defendant's counsel?

10 A I'm not sure they included every case in
11 which I just wrote a report but didn't do a
12 deposition and didn't do testimony.

13 So I'm not -- I mean, overwhelmingly,
14 the majority of cases I've done one or the other.
15 It may be a very few that got settled or dismissed
16 or something or I just submitted a report and it
17 never went anywhere.

18 Q And it's your testimony today under oath
19 that you provided that table and your updated CV
20 to counsel?

21 A Yep.

22 Q And you don't have any explanation as to

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1 why it may not have been provided to the
2 defendants in this case?

3 A Nope.

4 MR. HEBERT: For what it's worth -- and
5 we're on record -- we're checking, because, to the
6 best of our knowledge, we did submit it to you.
7 But we're trying to find out verification of that.

8 MR. HARRIS: Well, to the extent that it
9 purports to include Dr. Lichtman's CV and table of
10 cases in this report, I would object on the record
11 that it doesn't appear that it's included based on
12 what we received as the defendants, understanding
13 what you've indicated, Mr. Hebert.

14 MR. HEBERT: Understood your objection.

15 Q Dr. Lichtman, if I can ask you also to
16 flip back through both reports just to confirm
17 that what you've been shown as Exhibit 1 or
18 Exhibit 2 does not include your full CV and your
19 table of cases.

20 A It doesn't.

21 Q Dr. Lichtman, do you agree with the
22 statement that Virginia Beach's minority voters

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1 are politically cohesive?

2 A Yes.

3 Q Do you agree with the statement that
4 Hispanic and Asian voting patterns track black
5 voting patterns in Virginia Beach?

6 MR. HEBERT: Object to the form of the
7 question.

8 A Yeah. I'm not sure what that means.
9 How much do they track black voting patterns?

10 Q My question is do you agree with the
11 statement that Hispanic and Asian voting patterns
12 track black voting patterns?

13 A Again, I would need a further
14 explanation of what that means.

15 Q All right. Do you agree with the
16 statement that Hispanic-white vote polarization
17 tends to be greater than black-white vote
18 polarization in Virginia Beach?

19 A Run that by me again. There was a lot
20 of blacks and whites in there.

21 Q Yes, sir. I'm asking if you agree with
22 the statement that Hispanic-white vote

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1 polarization tends to be greater than black-white
2 vote polarization.

3 MR. HEBERT: Object to the form of the
4 question.

5 A Yeah. I'm not sure what that means
6 either. If you could clarify what you mean by
7 Hispanic-white and black-white polarization.

8 Q I'm asking you to make a comparison
9 between the vote polarization between Hispanics
10 and whites in Virginia Beach and blacks and whites
11 in Virginia Beach?

12 A I have not made such a comparison.

13 Q Have you made a comparison between Asian
14 and white vote polarization and black-white
15 polarization in Virginia Beach?

16 MR. HEBERT: Object to the form of the
17 question.

18 A I've made no such comparison.

19 Q Have you made any comparison between
20 Hispanic-Asian vote polarization and
21 black-Hispanic vote polarization?

22 MR. HEBERT: Object to the form of the

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1 question.

2 A I haven't made that determination.

3 Q Why haven't you made that determination?

4 A There's no reason to make that
5 determination in terms of the analyses I was doing
6 for my reports.

7 Q Is it your opinion that that analysis is
8 not important?

9 A Depends what the issue is that you are
10 referring to it. I also don't think you can
11 isolate Hispanic and Asian voting.

12 Q Let's go back to that last statement.
13 You indicated you don't -- your opinion
14 is that you can't isolate Hispanic and Asian
15 voting in the City of Virginia Beach?

16 A Not per se because of white error
17 margins. You can certainly get estimates, but the
18 error margins are going to be large, which is why
19 you've got to use the equivalence testing
20 analysis.

21 Q Do you believe that the error margins
22 you get from the Asian and Hispanic inquiry are

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1 reliable?

2 A The term reliable does not refer to the
3 error margins.

4 Q Do you believe that the Asian and
5 Hispanic analysis, if you were to isolate them --
6 and you indicated that you can't, so you'd have to
7 do equivalence testing, correct?

8 A Equivalence testing.

9 Q Can you do an isolated analysis of Asian
10 vote preference in Virginia Beach using ecological
11 inference?

12 A It will give you an answer, but it won't
13 be reliable.

14 Q Can you do an isolated analysis of Asian
15 vote preference using ecological regression in
16 Virginia Beach?

17 A Same problem. Won't be reliable.

18 Q Can you use extreme case to determine
19 the Asian vote preference in Virginia Beach?

20 A There are no extreme cases for Asians.

21 Q Referencing Hispanics now, sir, can you
22 use ecological regression to isolate the Hispanic

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1 vote preferences in Virginia Beach?

2 A Won't be reliable.

3 Q Same question for ecological inference.

4 A Won't be reliable.

5 Q And the same question for extreme case.

6 A There are no extreme cases. That's why
7 you look at the scatter plots, to see what kind of
8 analyses you can and can't do. And that's why you
9 use equivalence testing here.

10 Q Have you provided opinions in prior
11 cases specifically relating to the satisfaction of
12 Gingles prongs 2 and 3?

13 A I'm sure I have.

14 Q In those other cases, have you done
15 isolated point estimates of racial groups using EI
16 or ER analysis?

17 A Yes.

18 Q What was the difference between those
19 cases and this case in Virginia Beach?

20 A You want me to go through all the
21 differences between those cases and these cases in
22 Virginia Beach? There's lots of differences.

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1 Q Dr. Lichtman, I'm trying to understand
2 why in one case you're able to isolate the
3 Hispanic or Asian choice using ER and EI, but I
4 understand your testimony today that you can't
5 isolate Asian or Hispanic using EI or ER in
6 Virginia Beach.

7 A That's correct.

8 Q Not being an expert, I'm trying to
9 understand why that happens.

10 A It's simple. When I have used
11 ecological regression to estimate the behavior of
12 particular demographic groups, there's been enough
13 variation in the concentration of those groups
14 across the precincts. And that distinguishes from
15 an attempt to isolate Hispanic and Asian votes
16 here.

17 Q And is that because you understand
18 Virginia Beach to be a largely integrated city?

19 A I make no opinion about that. I'm just
20 looking at the precinct-by-precinct variation.

21 Q And precinct-by-precinct -- what
22 information would you expect or hope to see in the

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1 precinct-by-precinct variation that would allow
2 you to do EI or ER in Virginia Beach?

3 A Well, you would look at the scatter
4 plot, you would look at the areas; but as I said,
5 you'd want to at least get something approaching a
6 majority on both sides.

7 Q Is it your opinion in this case that
8 black, Hispanic, and Asian voters vote together as
9 a coalition in Virginia Beach?

10 A I think that's correct.

11 Q Is it your opinion in this case that
12 black, Hispanic, and Asian voters vote together as
13 a coalition and not just for minority candidates
14 in general?

15 A I don't understand that question, I'm
16 sorry.

17 Q Is it your opinion that minority
18 candidates that are strongly preferred by black,
19 Hispanic, and Asian voters are systematically
20 losing elections in Virginia Beach?

21 A I think that's right.

22 Q It's your opinion that elections for the

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1 Virginia Beach City Council have been marked by
2 racial appeals?

3 A Some of them.

4 Q It's your opinion that Latinos in
5 Virginia and Virginia Beach have been notoriously
6 discriminated against when renting apartments?

7 A I think that's right; although, I might
8 not use myself the word notoriously; but I think
9 that's true. There's a study I cite that bears
10 that out.

11 Q Is it your opinion that, as a result of
12 the history of official and private discrimination
13 in Virginia Beach, that black, Hispanic, and Asian
14 residents have lower rates of educational
15 attainment?

16 A That's particularly true of Hispanics
17 and blacks. It's more mixed for Asians.

18 Q Is it your opinion that, as a result of
19 the history of official and private
20 discrimination, that black, Hispanic, and Asian
21 residents in Virginia Beach experience poverty
22 more frequently?

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1 A I think that's correct. Let me check
2 something in my report. You're asking me to do a
3 lot of things from memory here, but I have it -- I
4 have it bound.

5 Q That's no problem. Take the time you
6 need, sir.

7 A Yes. Blacks, Hispanics, and Asians have
8 higher poverty rates than whites; and that's
9 particularly marked for blacks and Hispanics where
10 the rates are more than double.

11 Q And is it also your opinion that, as a
12 result of the history of official and private
13 discrimination, that black, Hispanic, and Asian
14 residents of Virginia Beach are unemployed at
15 higher rates than white residents?

16 A That's certainly true substantial for
17 blacks and Hispanics; Asians and whites have
18 roughly comparable unemployment rates.

19 Q Do you still have Exhibit 1, your
20 initial report in front of you, sir?

21 A I do.

22 Q We referenced briefly the statement of

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1 purpose found on page 2.

2 A Correct.

3 Q The first line indicates that you were
4 to examine the totality of the circumstances, and
5 then you referenced the Senate Factors.

6 My understanding is that there's nine
7 Senate Factors?

8 A Correct.

9 Q Is it your opinion that all nine Senate
10 Factors are present in Virginia Beach?

11 A Yes. And that's unusual.

12 Q In your Senate Factor analysis as to
13 Virginia Beach, do you analyze Virginia Beach as
14 its currently constituted since the town of
15 Virginia Beach in Princess Anne County joined in
16 1963, or do you go beyond -- back in time past
17 1963?

18 A I don't go back in time for Virginia
19 Beach per se, I obviously do go much farther back
20 in time for the Commonwealth of Virginia, which,
21 of course, affects everyone in the state,
22 including anyone in the current configuration or

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1 previously in the Virginia Beach area.

2 Q You understand that the current
3 configuration of the City of Virginia Beach was
4 established in the early 60s?

5 A That's right.

6 Q Are you aware of what the total
7 non-black and non-white population was in Virginia
8 Beach in the early 60s?

9 A Non-black, non-white population was
10 probably quite small in the early 60s. I can't
11 give you an exact number.

12 Q If I told you that the 1970 census
13 reported that it was less than one percent --

14 A That's possible. As I said, I know it
15 was very small.

16 Q Do you consider that fact to be
17 important to your opinion or your analysis of the
18 Senate Factors?

19 A No, because so much of the
20 discrimination post-dates that and really runs
21 right up to the present time when you have
22 substantial populations of Asians and Hispanics.

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1 Q When you say substantial populations of
2 Asians and Hispanics, do you know what percent
3 you're referring to when you say that?

4 A Sure. I think I have that here. Yep.

5 Q What are those percentages, sir?

6 A Sure. Hispanic population for total,
7 7.8; voting age, 7; citizen, 6.1; non-Hispanic
8 Asian, total 7.9; voting age 7.8; citizen voting
9 age, 6.6 and rising.

10 Q For the record, you're reading from your
11 report on page 14.

12 Which table is that?

13 A One.

14 Q Do you consider those percentages
15 significant?

16 A Absolutely. You're talking about a
17 pretty large city with hundreds of thousands of
18 people, so yes. You're involving a lot of people.

19 Q Earlier, we had talked about the ability
20 to produce isolated estimates for Asians and
21 Hispanics for ER or EI analysis.

22 My understanding of your testimony was

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1 that it couldn't be done using those methods in
2 Virginia Beach.

3 A Well, you could do it, but it's going to
4 have large error margins.

5 Q And having large error margins would be
6 an indication of an unreliable estimate?

7 A Yeah, an estimate, you know, that you
8 would not want to rely on, that's correct. That's
9 why you've got to use equivalency testing.

10 Q I'm trying to understand the distinction
11 between the significance of the Asian population
12 in that context and then your use of the phrase
13 significant in this context.

14 A Totally different context. In this case
15 we're talking about people affected by ongoing
16 discrimination, which is the Senate Factor you
17 were referring to me. In the other we're talking
18 about something entirely different and that is
19 whether the size of the population and its
20 distribution across precincts enables you to
21 utilize effectively EI, ER, or extreme case
22 analysis. These are complete apples and oranges.

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1 Q Is it your opinion that blacks,
2 Hispanics, and Asians share the lingering effects
3 of discrimination in Virginia Beach equally?

4 A To a very large extent, blacks and
5 Hispanics; to a lesser extent, Asians.

6 Q Sir, while you have your report open,
7 I'm going to turn your attention to page 5.

8 A Okay. I'm there.

9 Q There's a header that says State of
10 Virginia.

11 Do you see that?

12 A Of course.

13 Q But follow that section. It goes all
14 the way until page 12.

15 A That's just at the very top of page 12.

16 Q Yes, sir.

17 A Not all of page 12. That's right.

18 Q My review of these sections from the
19 start of page 5 to the top of page 12 leads me to
20 believe that this is related to Virginia writ
21 large.

22 A To the Commonwealth of Virginia, that's

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1 correct.

2 Q The only specific reference to Virginia
3 Beach I observe in those pages is contained on
4 page 11.

5 MR. HEBERT: Object to the form of the
6 question, and I believe the premise of the
7 question is wrong.

8 A I'm lost now between the objection and
9 the question. Maybe you can rephrase it.

10 Q Let me ask it a different way, and I'll
11 try and avoid the objection, and maybe that will
12 make it easier.

13 A Good.

14 Q I'm pointing your attention to this
15 section, State of Virginia. I see it going from
16 page 5 to page 12. I believe you confirmed that.

17 A Yes. To the very top of page 12 and
18 kind of the middle of page 5, that's right.

19 Q Can you tell me where, from page 5 to
20 page 12, you refer specifically to the City of
21 Virginia Beach?

22 A Okay. That question I think I can

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1 answer because it's straight factual.

2 Q I'm doing my best.

3 A That was a fair question. Page 11, page
4 12.

5 Q Can you tell me for the record where
6 you're referring to on page 11, please?

7 A The second full paragraph -- one, two,
8 three, four -- five lines down.

9 Q In reference to the Equal Rights Center
10 report?

11 A That's correct.

12 Q And on page 12, can you point me to
13 where for the record you're referring to Virginia
14 Beach?

15 A Yes. First full paragraph -- one, two,
16 three -- four lines down.

17 Q That's in reference to the general
18 assembly's passage of house bill 2270?

19 A I think 2270 comes after that. I'm not
20 sure it's the exact same bill number.

21 Q That's fair. And I'm not trying to trap
22 you --

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1 A Yeah.

2 Q -- I'm just trying to make sure --

3 A It's what's known as the sanctuary
4 cities bill, well known in Virginia.

5 Q I'm going to turn your attention back to
6 page 11 where you've identified the City of
7 Virginia Beach in the Equal Rights Center report.

8 A Correct.

9 Q It appears that that report was
10 completed in 2013 based on your report?

11 A Yes.

12 Q And you provide a date and the Footnote
13 No. 24 of 30 April, 2013?

14 A Yes.

15 Q I understand that to be the date in
16 which the report was published?

17 A Correct.

18 Q And you accessed that report through
19 this URL?

20 A Correct.

21 Q Did you have an opportunity to review
22 the full report in preparing your opinions in this

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1 case?

2 A I'm sure I did. I don't recall exactly.
3 It's been a while now.

4 Q In your review of the entire report, do
5 you know if the report did a breakdown of each
6 independent city?

7 A I don't think so.

8 Q Do you have any understanding or any
9 knowledge related to what levels of adverse
10 treatment were found in Virginia Beach
11 specifically?

12 A I don't think it broke it down to the
13 particular jurisdictions. That's why it's under
14 the heading of State of Virginia or Commonwealth
15 of Virginia rather than Virginia Beach per se.
16 There's a separate section on Virginia Beach.

17 I think it's time for me to get a break.

18 Q Certainly.

19 A Is this a good time?

20 Q That's fine. No problem.

21 THE VIDEOGRAPHER: We are going off the
22 record. The time is 1:00 p.m.

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1 (Off the record at 1:00 p.m.)

2 (On the record at 1:31 p.m.)

3 THE VIDEOGRAPHER: Back on. The time is
4 1:31 p.m.

5 MR. HEBERT: So during the break, I have
6 done some checking of my emails as well as my
7 co-counsel. And despite my hopeful recollection
8 that we had sent the list of cases as well as the
9 CV of Dr. Lichtman, it appears that we were -- I
10 was mistaken, that we did not do so, for which I
11 am profusely apologetic to counsel.

12 As I said earlier when we were on the
13 break, you know, we've -- both sides have worked
14 very cooperatively in my opinion in this case and
15 professionally; and I can only say that, if you
16 had let me know on July 15th, I would have gotten
17 it to you then or this morning while we were
18 waiting for the hour-and-30-minute delay of the
19 court reporter; however, I am willing -- I have
20 the -- both documents here, and I'm going to
21 distribute them now.

22 If you want to take a break and review

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1 them for a time period, you're welcome to do that.
2 You can question -- without a break, I'm going to
3 leave that to you as a good-faith effort on my
4 part to not inconvenience you more than you've
5 already been inconvenienced and, again, for which
6 I apologize.

7 I think -- and my only explanation is,
8 when I saw in his report that I have attached my
9 most recent CV and listing of cases, I thought it
10 was literally part of that document. And I should
11 have checked, and I did not. And when Ms. Lang
12 transmitted it to you, she perhaps thought the
13 same thing as well but --

14 MR. BOYNTON: Well, Mr. Hebert, we thank
15 you for your candor in that record, and we'll
16 receive it now. And obviously everybody preserves
17 all objections and responses to objections, but
18 we'll at this point proceed as best we can.

19 MR. HEBERT: Okay. There is the listing
20 of cases. Can you give me back one?

21 MR. BOYNTON: Sure. Go ahead and mark
22 it. Yes, I think that makes sense, to mark what

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1 was provided in the deposition. And we will put
2 on the record this is the first time we've seen
3 it, obviously, so -- and then I will refer to
4 Mr. Harris as to one of us take a break now or
5 later to review it and digest it and all that.

6 MR. HEBERT: And I'm not going to go
7 into anything else on the record as to when you
8 discovered it wasn't there or anything like that.
9 As far as I'm concerned, it was my mistake. I
10 take full responsibility for it, and I apologize
11 for it.

12 MR. BOYNTON: We appreciate that.

13 MR. HEBERT: And this is the resume,
14 Jerry.

15 MR. HARRIS: Okay.

16 MR. HEBERT: And those are multiple
17 copies.

18 MR. HARRIS: That's been marked
19 Exhibit 3, the Allan J. Lichtman cases (dates
20 approximate) deposition, affidavit, or oral
21 testimony.

22 (Deposition Exhibit 3 was marked and was

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1 attached to the transcript.)

2 MR. HARRIS: I'll put an Exhibit 4
3 sticker on the CV.

4 (Deposition Exhibit 4 was marked and was
5 attached to the transcript.)

6 MR. BOYNTON: Okay. And so in order to
7 try to make tomorrow as streamlined as possible,
8 I'm going to step out and work on Mr. Spencer's
9 deposition a little bit more. And I appreciate
10 everybody's time today, and I'll leave it in the
11 capable hands of my colleagues, so --

12 MR. HEBERT: Okay. Thank you, Chris.

13 MR. BOYNTON: Thank you.

14 MR. HEBERT: Always good to be with you.

15 MR. HARRIS: I don't intend to take
16 another break to review it. What I'd like to do
17 is continue with my line of questioning. And
18 then, if we end up taking another break in an hour
19 or so, I'll review it during the break so that we
20 don't delay --

21 THE WITNESS: We'll definitely be taking
22 a break in an hour or so.

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1 MR. HARRIS: The day is getting long
2 already for a lot of stuff --

3 THE WITNESS: No kidding. I'm sitting a
4 long time.

5 I don't need this right now.

6 BY MR. HARRIS:

7 Q Dr. Lichtman, we've just had a
8 discussion on the record in reference to the prior
9 cases, deposition, affidavit, or oral testimony
10 marked as Exhibit 3. I suspect you've seen this
11 document. I just need you to confirm on the
12 record that it is what it purports to be.

13 A It is.

14 Q And Exhibit 4, which is your CV, I would
15 have the same question.

16 Just confirm for us on the record that
17 it is, in fact, your updated CV.

18 A At least updated to the time of my
19 original report. That's when I would have sent it
20 in.

21 Q That's an important clarification.

22 And can I ask you for the same

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1 clarification on Exhibit 3, which is your cases,
2 deposition, affidavit, or oral testimony. Is that
3 up to date as of the initial report?

4 A Yes. But I don't think anything would
5 be added to that. There wouldn't be anything
6 substantial added to the CV except I'm pretty
7 continually writing op-eds, so maybe a couple of
8 new op-eds. Other than that, it's pretty
9 accurate.

10 Q We're all waiting for your Trump
11 prediction for your next op-ed.

12 A You and, like, a lot of other people.
13 You know, I got a note from him after my
14 first prediction.

15 Q Wow.

16 A In his Sharpie on the Washington Post
17 article where I did his prediction.

18 Q We have something else to look at during
19 the break.

20 I want to get back to --

21 A You can have it. I'm happy to give you
22 a copy if you're interested.

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1 Q I want to turn your attention back to
2 page 11 of your initial report, sir.

3 A Yes.

4 Q Before we took the break, we were
5 discussing the 2013 Equal Rights Center report.

6 A Yes.

7 Q And we were discussing how the data was
8 presented in that report. And I understood your
9 testimony to be that you didn't see in the report
10 Virginia Beach reported in isolation; is that
11 correct?

12 A That's my best recollection, yes.

13 Q And that recollection comes from what
14 you believe was your review of the full report?

15 A That's correct.

16 Q Do you have any independent evidence of
17 these sorts of violations in Virginia Beach beyond
18 what's reported inside the study that you've
19 offered me today?

20 A I certainly have evidence of
21 discrimination in Virginia Beach, but I don't
22 think it deals specifically with the subject of

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1 this study.

2 Q I want to turn your attention to page
3 12. And we've made a reference to page 12 already
4 today as it relates to the sanctuary city bills or
5 sanctuary city laws.

6 A Yes.

7 Q Do you see at the top of page 12 where
8 you've identified previously in your testimony
9 that Virginia Beach is referenced?

10 A Yes.

11 Q Tell me about why sanctuary city bills
12 are important to your analysis and your ultimate
13 opinions?

14 A Well, they're not central to my analysis
15 or my ultimate opinion. They are just one small
16 element of it. And they stem out of the quotation
17 on the previous page from the center's executive
18 director, John Kohl (phonetic), where he said,
19 While we're beginning to see movement towards a
20 consensus around immigration reform, hostility
21 towards immigrants at the local level
22 unfortunately continues to result in unfair

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1 treatment for many irrespective of their immigrant
2 status, unquote.

3 The center recommended that, quote,
4 legislators should ensure that all
5 immigration-related bills encourage fair housing
6 and comply with federal civil rights laws.

7 That flows out of that -- I'm pointing
8 out that the sanctuary city bills simply inflames
9 the tension around immigration and particularly,
10 obviously, Latinos, which is also reflected in the
11 housing discrimination.

12 MR. HEBERT: Excuse me, can we pause for
13 like 30 seconds off the record?

14 MR. HARRIS: Yes.

15 THE VIDEOGRAPHER: We are going off the
16 record. The time is 1:39 p.m.

17 (Off the record at 1:39 p.m.)

18 (On the record at 1:40 p.m.)

19 THE VIDEOGRAPHER: Back on the record.
20 The time is 1:40 p.m.

21 MR. HEBERT: I apologize for that
22 inconvenience. I had to step out for 30 seconds

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1 or so.

2 MR. HARRIS: Not a problem.

3 THE WITNESS: And I finished my answer.

4 BY MR. HARRIS:

5 Q Relating specifically to the City of
6 Virginia Beach, has Virginia Beach, to your
7 knowledge, been labeled a sanctuary city?

8 A I don't believe so. Not to my
9 knowledge. And it certainly could be, but not to
10 my knowledge.

11 Q In your profession or in your
12 professional experience, do you have an idea of
13 how cities become labeled as, quote/unquote,
14 sanctuary cities?

15 A I think that's a political label.
16 There's no such standard definition that's
17 objective of sanctuary cities.

18 Q I guess I'm trying to understand is
19 there some legal criteria that would say -- or at
20 least some legal criteria you're aware of that
21 would say this city is a sanctuary city versus
22 this city is not a sanctuary city?

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1 MR. HEBERT: Object to the form of the
2 question.

3 A I'm not a lawyer, so I can't parse that
4 out for you. My understanding is it's a political
5 designation.

6 Q I want to continue down on page 12 of
7 your report, sir.

8 A Yes.

9 Q You make a reference on the second
10 paragraph from the bottom, As indicated in table 2
11 and chart 1.

12 Do you see that paragraph?

13 A Yes.

14 Q The statement, The minority population
15 of Virginia Beach has been growing in recent years
16 relevant to non-Hispanic white population.

17 A Correct.

18 Q It appears that you rely on the census
19 date of 2000 through the ACS data of 2013 to 2017
20 estimates to reach that conclusion.

21 A Correct.

22 Q Did you rely on the 2010 census

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1 information to reach that conclusion as well?

2 A I may have looked at it, but I don't
3 recall because I wanted to look at the most recent
4 census materials.

5 Q Is there any other reason why you
6 wouldn't also place the 2010 census information on
7 that chart?

8 A I think I just wanted to get the most
9 recent.

10 Q Did you do an independent analysis of
11 the growth of Hispanics alone in that same time
12 frame?

13 A I think I just looked at the minority
14 population versus the non-Hispanic white
15 population. I don't think my tables isolate
16 individual minority groups.

17 Q Was it important to your opinion to
18 isolate those minority groups?

19 A No. My critical element here that I was
20 looking at was the fact that you have a city
21 that's becoming increasingly minority and
22 increasingly less non-Hispanic white.

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1 Q Can I assume, then, you did not do an
2 individualized or isolated analysis on the trends
3 of African Americans alone in Virginia Beach?

4 A As the table indicates, it's all
5 minority.

6 Q Would it be significant to your analysis
7 or your opinions if one of those groups of the
8 three tri-part minority groups were growing more
9 quickly than others?

10 A No.

11 Q Why not?

12 A Because all I'm trying to document here
13 was this is becoming an increasingly minority
14 city, not to parse out distinctions among minority
15 groups.

16 Q And if any of those distinct minority
17 groups' population had actually declined from 2010
18 until 2013, would that be important to your
19 opinion in that chart?

20 A No. The chart just looks at minorities
21 combined.

22 Q Can you tell me what you understand the

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1 difference to be between ACS or American Community
2 Survey data and decennial census data?

3 A Yes. ACS data is a sample; the
4 decennial census data at least attempts to
5 enumerate the entire population.

6 Q Is there --

7 A ACS data is used as a standard basis by
8 social scientists all the time.

9 Q Is a margin of error reported with ACS
10 data estimates?

11 A Yes.

12 Q Okay. Is a margin of error reported for
13 decennial census data estimates?

14 A I don't believe it is.

15 Q Do you know why not?

16 A Because they try to enumerate the entire
17 population rather than a sample.

18 Q I want to continue forward through your
19 report to page 17, please, sir.

20 The second full paragraph down begins,
21 In addition to the at-large election system.

22 A Yes.

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1 Q You make a reference in the report; and
2 it states, The allocation of polling place
3 resources has been found to burden minority
4 residents of Virginia Beach.

5 Is that still your opinion as you sit
6 here today?

7 A Yes.

8 Q What's the significance of allocation of
9 polling place resources as it relates to this
10 Senate Factor?

11 A The more polling place resources, the
12 easier it is to vote. And this is one aspect of
13 discrimination against minorities that
14 particularly relates to voting and in this case
15 particularly the predominant minority group in
16 Virginia Beach, specifically African Americans.

17 Q You reference a study in the next
18 sentence, it appears, A study of the allocation of
19 polling place resources in 2004 and 2008 by
20 Dr. Walter R. -- I apologize, Doctor -- Mebane,
21 M-E-B-A-N-E, Jr.?

22 A Yes. Yes.

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1 Q You've had an opportunity to review that
2 full report?

3 A Yes. In fact, I cite the detailed
4 statistical analysis here.

5 Q And that report was submitted as a
6 declaration in the case that you quote in -- or
7 cite in Footnote 30?

8 A Yes.

9 Q What was your understanding of the
10 findings of that study as it relates to Virginia
11 Beach?

12 A I can read to you what I wrote here.
13 It's all outlined in paragraphs 1, 2, 3, 4 in the
14 middle of page 17.

15 Q I don't need you to read it. I want to
16 confirm your understanding of that study is
17 summarized, I'll say, in those next four
18 paragraphs.

19 A That's correct.

20 Q Have you done your own analysis of the
21 allocation of polling place resources in Virginia
22 Beach more recent than 2004 and 2008?

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1 A No. But what I did was I think in my
2 rebuttal report I documented the lower turnout of
3 minorities as compared to whites in Virginia
4 Beach, which is obviously not just a function of
5 this but is obviously relevant.

6 Q You would attribute the allocation of
7 polling place resources as one of multiple factors
8 to the reduced voter turnout for African Americans
9 in Virginia Beach?

10 A Yes. And Dr. Mebane says it's
11 substantial, on the order of five to ten percent;
12 so it's not an irrelevant factor. Obviously the
13 biggest factor may well be lingering and ongoing
14 discrimination.

15 Q Are you aware of any studies related to
16 Virginia Beach regarding the allocation of polling
17 place resources in predominantly Asian
18 communities?

19 A No.

20 Q Are you aware of any studies regarding
21 the allocation of polling place resources in the
22 City of Virginia Beach regarding predominantly

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1 Hispanic communities?

2 A No. The African American community is
3 the predominant minority community.

4 Q You cite Virginia State Conference of
5 the NAACP v. Kaine in Footnote 30.

6 Do you know the outcome of that case?

7 A I have no idea.

8 Q Do you have if an answer was ever filed
9 by the defense in that case?

10 A An answer to what?

11 Q The complaint that was filed.

12 A I don't know.

13 Q Do you know if a response report was
14 ever produced in that case in response to the
15 declaration of Dr. Mebane?

16 A I didn't see one, but I can't say for
17 sure there wasn't one.

18 Q You understand that Dr. Mebane was the
19 retained expert on behalf of the plaintiffs in
20 that case?

21 A Yes.

22 Q Did you consider his opinion in that

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1 case unbiased?

2 A Yes, because it's supported by detailed
3 statistical analysis. What counts is the
4 analysis, not the identity in this case of the
5 scholar in terms of where he stood in the case.

6 Q I want to turn your attention now two
7 pages forward to page 19, sir.

8 A Okay. That's the chart?

9 Q Yes, sir. Chart 2 on the top of page
10 19.

11 A Yes.

12 Q It appears you produced point estimates
13 and you've charted them for black and white
14 students.

15 And the chart indicates, For short-term
16 suspensions by race, public schools, Virginia
17 Beach 2015 to '16.

18 A That's incorrect.

19 Q That's incorrect? What did I say
20 incorrectly?

21 A I didn't produce these. These were
22 produced by the study that is previously

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1 referenced. In other words, these are not my
2 numbers.

3 Q Thank you. That's a proper
4 clarification.

5 You've taken the study's numbers and
6 you've populated them into this chart; is that
7 correct?

8 A Yes.

9 Q The phrase short-term suspensions, can
10 you tell me what that means?

11 A It means you're not expelled permanently
12 from the school.

13 Q Do you know if it's in-school
14 suspensions or out-of-school suspensions?

15 A I'm trying to remember, and I can't --
16 let me see if I -- out-of-school suspensions.

17 Q Did you read your report somewhere that
18 refreshed your recollection on that?

19 A Yeah.

20 Q Can you tell me where?

21 A Yeah. Page 18, first full paragraph,
22 Virginia schools continue to issue a huge number

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1 of out-of-school suspensions, posting a slight
2 increase from even the 2014/2015 totals.

3 Q Thank you. Going back to page 19 on the
4 chart, the chart gives a date of 2015 to 2016 --

5 A Right.

6 Q -- but it -- that same sentence you just
7 read from on page 18, shows 2014/2015 totals.

8 A No. It says, Posting a slight increase
9 from even the 2000.

10 Q So the comparison that's being made here
11 is 2015 to '16, which is on your chart, references
12 that it's up from just the prior year?

13 A No. Let me explain. I put that
14 sentence in just to explain what they're looking
15 at. My chart does not reference the temporal
16 comparison between 2014, 2015, and 2015/2016 which
17 the present study looks at. It simply reports the
18 suspensions for blacks and whites in the same time
19 frame so that you actually have an apples to
20 apples comparison.

21 Q You did not select 2015/16 specifically;
22 is that correct?

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1 A That's the latest year they looked at,
2 so I took the latest year, which makes perfect
3 sense.

4 Q Have you had the opportunity to review
5 any data since filing this report more recent than
6 2015/2016?

7 A I did not come across any updated
8 information, and your expert in responding to my
9 report did not present any.

10 Q I'll ask it another way.

11 You don't have any more recent
12 information than beyond 2015/2016?

13 MR. HEBERT: Object to the form of the
14 question.

15 A The study that I looked at, the latest
16 year they had was 2015/2016. I'm not aware of an
17 update, and your expert did not challenge this by
18 presenting updated data.

19 Q Hispanics and Asians are not included on
20 chart 2. Is that because they weren't included in
21 the study that's referenced on the prior page?

22 A No. Asians were not; Hispanics were.

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1 And interestingly, the suspension rate for African
2 Americans was much larger than for Hispanics.

3 Q Do you know what the suspension rate was
4 for Hispanics?

5 A I don't have it off the top of my head,
6 but anyone can find it in the survey.

7 Q Why didn't you put it on that chart?

8 A I did. I put it in the --

9 Q On chart 2?

10 A No. But I put it in the explanatory
11 paragraph.

12 Q Can you point me to that paragraph in
13 your report?

14 A Middle paragraph on page 18.

15 Q The last paragraph, it says, The
16 suspension rate for African American students was
17 3.8 times --

18 A Yes. That's it.

19 Q But as you sit here today, you don't
20 recall the precise point estimate?

21 A I do not.

22 Q Do you have any information as to what

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1 the Asian short-term suspension rates were in that
2 same time frame?

3 A I don't recall Asians being isolated,
4 but it's possible they were. I just don't recall.

5 Q Do you consider that, the absence of
6 Asians in this chart, important to your analysis?

7 A No.

8 MR. HEBERT: Object to the form of the
9 question.

10 A I think it's important to show that, for
11 the predominant minority group in Virginia Beach,
12 there is this massive difference in short-term
13 suspensions. That's extremely important in terms
14 of documenting discrimination that has a
15 fundamental affect on people's lifetime
16 opportunities, students' lifetime opportunities.

17 Q Do you have any indication or any
18 information you can provide me today that there's
19 a massive difference between the suspension rates
20 of Hispanics and white?

21 A No. It seems to be fairly comparable.
22 I don't have the exact point estimates, though.

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1 Q And do you have any information that
2 would indicate or lead you to believe that there's
3 a massive difference between the suspension rates
4 of white and Asian students?

5 MR. HEBERT: Object to the form of the
6 question.

7 A I don't believe that the Asians will
8 isolate -- at least I don't recall. What I was
9 highlighting was what's happening to the
10 predominant minority. And whatever is going on
11 with Asians and Hispanics doesn't cancel that out.

12 Q I'm going to turn your attention next to
13 page 20, please, sir.

14 A I'm there.

15 Q There's a single paragraph on that page,
16 and I'm going to draw your attention to the end of
17 that paragraph to the sentence that's cited on
18 Footnote 34. This imbalance affects all minority
19 groups in Virginia Beach including African
20 Americans, Hispanics, and Asians.

21 That's still your opinion today, sir?

22 A Correct.

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1 Q Can you tell me how the imbalance
2 affects African Americans?

3 A Because the teachers in Virginia are
4 disproportionately white, so you have African
5 Americans not having the opportunity they would
6 otherwise have to have role models and mentors of
7 their own race.

8 And while I can't document a causal
9 connection, you combine that with the massive
10 disparity in suspension rates between African
11 Americans and whites, and you have this very
12 disturbing synergy for African Americans in
13 schools in Virginia Beach.

14 Q How does this imbalance affect Hispanics
15 specifically?

16 A Well, again, with the predominant
17 teachers being white and such a large percentage
18 of students being minority -- this means for all
19 minority groups, not just African Americans --
20 they're less likely to have mentors, role models
21 of their own race or ethnic identification.

22 Q Do you make any correlation between the

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1 suspension rates of Hispanics and this imbalance?

2 A No. I said particularly for African
3 Americans there is this unfortunate synergy
4 between the two measures. I'm not equating that
5 for Hispanics and Asians in terms of the
6 suspension rates.

7 Q Dr. Lichtman, I want to turn now to
8 factor 2.

9 Factor 2 starts in your report on page
10 21, and I believe you reference factor 2 also in
11 your rebuttal report which we've marked as
12 Exhibit 2.

13 A Yeah. Actually, extensively in my
14 rebuttal report.

15 Q Yes, sir. I want to talk broadly about
16 factor 2, more specifically, racially polarized
17 voting.

18 When we started our deposition earlier,
19 I understood your testimony to be that racially
20 polarized voting has two component parts. I would
21 shorthand those to prong 2 and prong 3 together as
22 evidence of racially polarized voting.

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1 That's your testimony. I'm wondering if
2 you can describe for me how you define racially
3 polarized voting in any jurisdiction?

4 A That's not my testimony. The words you
5 used are not my words. In fact, I used very
6 different words because I'm not dealing with the
7 Gingles factors per se. I'm dealing with racially
8 polarized voting which is when there are
9 differences in the choices of candidates between
10 two racial groups or one racial group and a
11 combined racial group and then the degree of that
12 difference.

13 I do not anywhere here reference prongs
14 2 and 3 specifically or believe even in my
15 rebuttal report; although, I'd have to look at it.

16 Q In the general sense -- let's use a
17 two-person race, one African American candidate
18 and one white candidate -- what analysis would you
19 do to determine whether there's racially polarized
20 voting occurring in that hypothetical race?

21 A Presuming the data sustained it -- and
22 we went through a lengthy explanation about that.

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1 There are three standard methodologies: Extreme
2 case analysis, ecological regression, and
3 ecological inference whereby you could derive
4 estimates of the vote for each candidate by the
5 racial groups in question and then measure the
6 differences between them.

7 I believe that was done by Dr. Spencer
8 specifically with respect to several
9 presidential -- I think it was a congressional
10 election which covered the boundaries of Virginia
11 Beach. We essentially had a one-on-one situation
12 that's very rare for city council elections in
13 Virginia Beach.

14 Q Is there any rule of thumb for the
15 percentages you would want to see on EI or ER
16 analysis to conclude there is racially polarized
17 voting?

18 A No. It's a continuum, right? It goes
19 from zero, which indicates no racially polarized
20 voting, up to 100, which indicates, you know, one
21 group is 100 percent behind, the other is zero,
22 which you never see.

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1 So it's a continuum that's measurable.
2 If you want to see how that's done, you can look
3 at my rebuttal report where I actually do that
4 kind of analysis. I don't do that here.

5 Q Well, I want to talk more in a general
6 sense in your expertise.

7 I understand you say that it's a
8 continuum, but is there a point on that continuum
9 where you begin to say I don't find racially
10 polarized voting in this instance?

11 A Again, you know, there's no
12 hard-and-fast rule, but I'd like to see more than
13 one or two or three or four percent difference.
14 I'd like to see something more substantial than
15 that.

16 But I report it to the judge, whatever
17 the numbers are, and you can see the difference
18 between very minimal racially polarized voting
19 and, you know, a very high degree of racially
20 polarized voting.

21 Q I want to try and understands the
22 varying degrees of polarization. I understand

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1 you're saying it's on a continuum, but is there a
2 point where you say, for example, it's very clear
3 and then there's other examples that you would say
4 it's not as clear?

5 A I would say in a one-on-one election
6 with one black candidate and one white candidate,
7 it's very clear if it's a landslide difference,
8 60/40, okay? Let me finish.

9 But that's not, you know, an absolute
10 standard. You certainly can have racially
11 polarized voting with less of a difference. But
12 that kind of landslide difference certainly would
13 be indicative of substantial racially polarized --
14 well, even then -- and then it goes on and becomes
15 higher than that.

16 Q I only furrowed my brow because of the
17 word landslide.

18 Is that a term you're putting on it, or
19 is that a term of art within your --

20 A It's a term of art. Landslide elections
21 are usually elections where one side gets
22 60 percent or more of the vote. It's not -- you

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1 know, again, these things are not hard-and-fast
2 rules; but that's a rule of thumb.

3 Q Is that the rule of thumb you've applied
4 in this case, in your rebuttal report?

5 MR. HEBERT: Object to the form of the
6 question.

7 Are you still talking about your
8 hypothetical one-on-one race, or are you talking
9 about something else?

10 MR. HARRIS: Well, I'm asking
11 specifically now.

12 Q You had mentioned your rule of thumb in
13 a one-on-one race was 60 percent, admitting that
14 it can vary --

15 A Right. But still have racial
16 polarization with lower numbers than that. But
17 once you get there, it's pretty definitive in my
18 view.

19 Q And I'm asking generally, did you apply
20 that rule of thumb or that landslide method to
21 your reports?

22 A I didn't have to because polarization

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1 was vastly greater between whites and blacks in
2 the election I looked at than this 20 percent
3 margin. I think it was 59 percent difference,
4 which is enormous.

5 Q Do you recall what election specifically
6 that was?

7 A We can look at my report.

8 Q Please.

9 A I think these are elections that your
10 expert, Dr. Kidd, had singled out as a majority of
11 blacks voting for these candidates. So it's on
12 the page 7.

13 Q Of the initial report or the rebuttal?

14 A It's the rebuttal report. I didn't do
15 any of these analysis in the initial report.

16 Q I'm with you, sir.

17 A Yeah. And you can see on average
18 81.9 percent of the black vote went for these
19 candidates. And in contrast, only 22 percent of
20 the white vote -- that's a 59.9 percent
21 polarization difference, and that is very
22 substantial. Far beyond the 60/40 margin that I

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1 talked about as being a clear indication of
2 racially polarized voting. This is extreme
3 racially polarized voting.

4 Q Your analysis in Table R2 on page 7 is
5 specifically between the black voters and the
6 white voters of the City of Virginia Beach?

7 A That's correct.

8 Q Did you produce a similar table related
9 to the racial polarization in Virginia Beach
10 comparing Asians to whites in Virginia Beach?

11 A We've been through a long colloquy on
12 that about why you can't isolate the Asian vote.

13 Q Is that the reason you can't produce a
14 table like this for Asian?

15 A You cannot reliably produce a table like
16 this for Asians the same way you can for blacks.

17 Q As to Hispanics, can you reliably
18 produce a table like Table R2 comparing Hispanic
19 and white vote in Virginia Beach?

20 A You could do it; but, you know, it would
21 have problems. And we've been through that at
22 great length.

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1 Q I want to talk about the term minority
2 candidate of choice.

3 Is that a term you're familiar with?

4 A I am.

5 Q Can you tell me what that term means to
6 you?

7 A Candidates supported by majority or
8 plurality of the minority voters. Or to put it a
9 simple way, would this candidate have won based
10 upon minority votes alone. And that could be for
11 single minority or for minorities combined.

12 Q Is there a difference between the
13 minority candidate of choice and a -- let me step
14 back. I'm about to ask a bad question, and I
15 don't want to do that.

16 A I won't answer a bad question, don't
17 worry.

18 Q Good. I want to talk about two types of
19 hypothetical races.

20 We've talked about black candidate
21 versus a white candidate as just a single-seat
22 election head to head.

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1 A That's the simplest example.

2 Q That's the simplest example.

3 So in that race, the minority candidate
4 of choice would be determined how?

5 A You would do an ecological regression or
6 an ecological inference, checked for me -- not
7 necessarily by everyone -- by an extreme case
8 analysis. You'd probably look at the scatter
9 plots and determine which candidate got a majority
10 of the minority vote.

11 And we're talking majority here because
12 by definition it has to be.

13 Q Assume now that it was a racial
14 coalition, not just blacks supporting black
15 candidates versus whites supporting white
16 candidates.

17 A Okay.

18 Q If there was Hispanic and Asian -- I
19 mean, excuse me, Hispanic and black support for a
20 singular candidate and you assume cohesion of
21 those two groups, the blacks and the Hispanics,
22 does your definition of minority candidate of

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1 choice change in that circumstance?

2 MR. HEBERT: I'm going to object to the
3 form of the question.

4 A Yeah. Without getting into the
5 premises, just look at the math of it, it can't.
6 If it's a one-on-one election by definition,
7 whether you're looking at a group of minorities or
8 one minority, it's going to be 50 percent plus
9 one.

10 Q Is there a difference between minority
11 candidates of choice and political cohesiveness of
12 a minority group?

13 A I think you look at political
14 cohesiveness through looking at minority
15 candidates of choice.

16 Q Can you help me understand better how
17 those two terms, political cohesiveness and
18 minority candidate of choice, sort of go together?

19 A I think they pretty much go together.
20 How do you figure out whether minorities are
21 cohesive? My methodology is to look at elections
22 with members -- with minorities running and see

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1 whether or not the minority group favors the
2 minority candidates.

3 Sometimes that could be through
4 50 percent or more, as we have seen here in my
5 Table 7; sometimes, when you have a lot of
6 splits -- of course you've got a lot of candidates
7 running -- it could be less than 50 percent.

8 Q Another term that's often used in these
9 types of cases is black voting.

10 Can you tell me what that means?

11 A Yes. That means whites predominantly
12 vote against the minority candidate of choice like
13 we see in my Table 7.

14 MR. HEBERT: Did you say Table 7?

15 A I'm sorry, page 7.

16 Q Page 7, Table R2.

17 THE WITNESS: Boy, you're sharp. He's
18 sharp; I'm old.

19 Q Dr. Lichtman, do you agree that the
20 existence of a cohesive minority group that is
21 usually defeated by black voting would be evidence
22 of racially polarized voting?

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1 A That isn't per se racially polarized
2 voting. You can have racially polarized voting
3 even where the candidate wins.

4 Q Are you of the opinion that distinct
5 racial and minority groups may be aggregated for
6 the purpose of asserting a Section 2 violation.

7 A I'm not going to comment on --

8 MR. HEBERT: Object to the form of the
9 question.

10 A I'm not going to comment on the legal
11 definition of a Section 2 violation. I certainly
12 think you can present to the court evidence of how
13 combined minority groups vote. Then it's up to
14 the court to decide whether it's a violation of
15 law.

16 Q Have you opined in prior cases on cases
17 where there was aggregating of minority groups?

18 A I'm sure I have. It doesn't immediately
19 come to mind. In Texas we did a lot of it. In
20 Florida we did a lot of analysis of different
21 minority groups, but the groups were large and
22 distinctive enough so you can separate them out.

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1 Q When you say separate them out, are you
2 referring to the isolated analysis that we talked
3 about?

4 A That's right. As opposed to looking at
5 them as a complete coalition.

6 Q Have you ever opined in a case where
7 there was a tri-part coalition of minorities
8 before such as this case?

9 A I'm sure I have. Let me look at my
10 cases and see if there's any recent cases in which
11 I did that. Most of these cases did not involve
12 combined minorities.

13 I may have done it -- there's so many
14 iterations of the Texas redistricting cases, I
15 can't keep them all straight. But I think I did
16 in at least one or two of the iterations in the
17 Texas redistricting. Because one of the issues
18 was you couldn't draw a district -- this was a
19 redistricting case. You couldn't draw a district
20 at a certain area of the state where a single
21 minority group had a majority of the citizen
22 voting-age population, but you could draw a

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1 combined group.

2 And because blacks, Hispanics -- I don't
3 remember if we did Asians, but we certainly did
4 blacks and Hispanics -- were cohesive in general
5 elections, that, in fact, that district could
6 elect a combined candidate of choice of blacks and
7 Hispanics.

8 Q The Texas redistricting case is in --
9 can you point me on your chart which ones those
10 may have been?

11 A Yeah. I'm trying. I think Perez v.
12 Abbott -- the names of these keep changing because
13 they go on forever -- from 2017; and I believe
14 Veasey v. Perry, 2014; and Texas v. U.S., 2012 --
15 although, I'm not sure I did a statistical
16 analysis for that one. It was definitely this
17 issue, as I said, in these cases of the ability of
18 combined minority groups to elect a candidate of
19 their choice, which I said they could.

20 Q Does your analysis of political
21 cohesiveness become more difficult when you add a
22 second minority group to it?

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1 A It can. It can. I mean, it can
2 complicate it. The simplest case is one minority,
3 whites, one-on-one election for one position.

4 Q It stands to reason, then, that it would
5 complicate it further if there was three minority
6 groups being coalesced together?

7 A Not necessarily if you're not isolating
8 all the minority groups. It's not that
9 complicated to do an analysis of all the groups
10 together as a coalition.

11 Q Do you believe the most persuasive
12 evidence of inter-minority political cohesion is
13 voting patterns of those groups?

14 A I think there's two elements. One,
15 certainly you want to look at voting patterns; and
16 then, you know, if you're dealing with a
17 districting issue like we had in the Texas case,
18 you want to look at districts and see if those
19 districts would elect minority candidates of
20 choice.

21 MR. HEBERT: Counsel, I'm not trying to
22 testify, but I was counsel in all the cases that

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1 he's referring to Texas redistricting. Would you
2 like me to go through and tell you which ones,
3 because that's what your first question was, or do
4 you want to just leave the record as is?

5 MR. HARRIS: We'll leave the record as
6 it is. I imagine we can circle back off the
7 record. That would be helpful to me if you're
8 prepared to offer that. But I don't want to keep
9 Dr. Lichtman more than -- he's been here all day,
10 so I want to keep on moving.

11 A Good. Keep going.

12 Q I want to ask you, Dr. Lichtman, have
13 you formed an opinion in this case as to whether
14 blacks', Hispanics', and Asians' voting patterns
15 indicate inner-minority cohesion?

16 A Yes. The candidates of choice of
17 combined minorities tend to be the same -- usually
18 the same candidates of choice of blacks, the one
19 group big enough and variable enough to be
20 analyzed separately.

21 Q And you're prepared to offer that
22 opinion in this case without the ability to

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1 isolate the specific votes of Asians and
2 Hispanics?

3 A Yeah. We're talking about combined
4 minorities, and we're talking -- yeah. As a
5 coalition, combined minorities usually prefer the
6 same candidates as African Americans.

7 Q I want to make sure we're not talking
8 about different things.

9 Is there a difference in your mind
10 between a coalition of Hispanic, black, and Asian
11 voters in Virginia Beach and cohesion between
12 blacks, Hispanics, and Asians in their voting
13 patterns?

14 A I don't understand the question.

15 Q We've used the term cohesion and
16 coalition today, and I'm trying to understand in
17 your mind if there is a difference between a
18 coalition of voters and cohesion between voters.

19 A I'm not sure what you mean by cohesion
20 between voters. We don't usually use that term to
21 describe differences between voters. So maybe if
22 you could be more specific.

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1 Q Well, let me ask it this way: Do you
2 believe that in Virginia Beach blacks, Hispanics,
3 and Asians are politically cohesive?

4 A As a group, yes.

5 Q Is that because you believe that they
6 form a coalition of voters?

7 A Yes.

8 Q Have you done any analysis as to whether
9 blacks and Hispanics are a political coalition
10 together?

11 MR. HEBERT: Object to the form of the
12 question.

13 A None of this analysis was done by me.
14 It was all done by Dr. Spencer. Certainly I
15 didn't do that analysis.

16 Q Were you able to find in Dr. Spencer's
17 report anywhere he produced an analysis of
18 cohesion between blacks and Hispanics?

19 A Only to the extent he did an equivalency
20 testing but not at length why you can't isolate
21 the Hispanic vote and isolate the Asian vote.

22 Q And were you able to identify anywhere

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1 in Dr. Spencer's reports where he does a cohesion
2 analysis between blacks and Asians?

3 A I don't know what a cohesion analysis
4 between groups is, so I can't answer that.

5 Q Did you identify anywhere in
6 Dr. Spencer's report where he did an analysis of
7 whether blacks and Asians form a political
8 coalition?

9 A I don't think he isolated blacks and
10 Asians. I think he looked at all minorities. But
11 you best ask him all these questions.

12 Q Would it be fair to say that you do not
13 dispute Dr. Spencer's finding regarding political
14 cohesiveness of blacks, Hispanics, and Asians?

15 A Again, when you say the political
16 cohesiveness between -- that's not usually a term
17 we describe across groups. That's a term we
18 usually say, Are blacks politically cohesive.

19 If you want to rephrase your question, I
20 can answer it.

21 Q Are blacks politically cohesive in
22 Virginia Beach?

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1 A Yes.

2 Q Are Asians politically cohesive in
3 Virginia Beach?

4 A We can't isolate -- we've been over this
5 many times -- the Asian vote.

6 Q So the answer to my question is you do
7 not have information that Asian are cohesive in
8 Virginia Beach?

9 A That's putting words in my mouth.
10 That's not correct. We don't have information one
11 way or the other on the individual behavior of
12 Asians. Beyond that, we can't go.

13 Q Are Hispanics politically cohesive in
14 Virginia Beach?

15 A Same answer as with Asians.

16 Q I apologize, we may have covered this
17 earlier and I don't mean to belabor it.

18 Were you able to observe any homogeneous
19 precincts in Virginia Beach for any of these
20 minority groups -- blacks, Asians, or Hispanics?

21 A And when you say homogeneous, I assume
22 you mean 90 percent or more?

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1 Q Extreme case.

2 A No.

3 Q I should have used extreme case. That
4 was the term you used earlier.

5 A I get your point, and there are no
6 90 percent-plus that I was able to see, and I only
7 did a very limited analysis on turnout. I can't
8 speak for Dr. Spencer. And as I said, it doesn't
9 have to be 90 percent. It could be 80 percent
10 or -- but I did not look for that particularly for
11 combined minorities.

12 Q Aside from any statistical evidence,
13 either yours or Dr. Spencer's, do you have any
14 other evidence you believe demonstrates a
15 political coalition between blacks, Hispanics, and
16 Asians in Virginia Beach?

17 A I don't have it, but other evidence
18 would be whether or not the minority candidates
19 could win in illustrative districts drawn without
20 a majority of one group but a combined majority.

21 That would be -- you know, we'd call
22 that reconstituted elections, and that's a second

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1 powerful test.

2 Q Do you know if Dr. Spencer undertook
3 that effort?

4 A I don't know. You'd have to ask him.

5 Q Are you familiar with a process called
6 double regression for determining racial group
7 voting preferences from aggregate data?

8 A I am.

9 Q Why are you familiar with that term?

10 A I'm one of the originators.

11 Q Can you tell me about what double
12 regression means?

13 A Yeah. One of the issues in any kind of
14 statistical analysis, unless you have -- which
15 sometimes we do but very rarely -- demographic
16 breakdown of actual voters because people register
17 by race and then their race is recorded when they
18 vote -- not their individual vote but their race
19 in the precincts -- there could be turnout
20 differences.

21 And the two regression methods takes
22 into account turnout differences. That's the only

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1 difference between that and the one regression --
2 one-equation regression method. They usually
3 don't give you different answers, but the two
4 regression methodology is a little bit more
5 refined.

6 Q And you're the creator of that method?

7 A I think I'm one of them, and I've been
8 credited by Dr. Grofman as one of the developers.
9 I wouldn't take sole credit.

10 Q I won't tell.

11 Was the double regression method applied
12 anywhere in your report or Dr. Spencer's report,
13 as best you can tell?

14 A I did not do any -- well, I did turnout,
15 but that didn't require the double regression
16 method. I didn't do any candidate analyses. And
17 as far as the nitty-gritty details of what
18 Dr. Spencer did, you should ask him.

19 Q As you sit here today, you're not aware
20 of whether Dr. Spencer relied on your double
21 regression analysis?

22 A I don't recall whether he did or not.

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1 But reading your expert response to Dr. Spencer, I
2 didn't see any challenge to the numbers
3 themselves, just to the interpretation of the
4 numbers.

5 Q I want to go to page 25 of your report.

6 A How about a break at this point?

7 Q Yes, sir.

8 THE VIDEOGRAPHER: We're going off the
9 record. The time is 2:27 p.m.

10 (Off the record at 2:27 p.m.)

11 (On the record at 2:36 p.m.)

12 BY MR. HARRIS:

13 Q Dr. Lichtman, I want to turn your
14 attention to page 25 on your report.

15 A Okay.

16 Q This is in reference to the candidate
17 slating process --

18 A Right.

19 Q -- factor 4?

20 In your first sentence there, you write,
21 Although I have not yet uncovered evidence of
22 formal slating for city council candidates -- as

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1 you sit here today, have you discovered any
2 additional evidence of formal slating for city
3 council in Virginia Beach?

4 A No. I did some subsequent analysis, but
5 it wasn't formal slating. It was relating to this
6 contribution analysis.

7 Q I believe you referred to that as an
8 informal slating process in this case?

9 A That's correct.

10 Q Have you relied on that in other cases,
11 this informal slating process?

12 A I think this is the first time that I
13 used this. It's not impossible that I may have,
14 but it doesn't -- you know, when you've been in
15 90 cases, you forget a lot. But it doesn't ring a
16 bell with me immediately in terms of slating.

17 I've certainly used contributions in
18 terms of assessing white contributions to black
19 candidates and issues related to that, but I don't
20 think I've used it as a proxy for slating
21 previously.

22 Q Are you aware of any other experts who

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1 have used this informal slating process as
2 indication of a factor 4?

3 A It's a good question. I don't know.
4 But your expert didn't dispute its relevance. He
5 just analyzed it on another basis.

6 Q How are slates of candidates identified
7 in a formal slating process?

8 A Well, usually they'll get together and
9 put out endorsements of one another or common
10 literature.

11 Q And do those usually involve candidates
12 who are competing simultaneously?

13 A Not necessarily. It could also -- you
14 also have incumbents involved because it's quite
15 relevant to an incumbent who they're going to be
16 serving with.

17 Q What was your criteria for
18 identification of informal slating?

19 A I think it was contributions of \$250 or
20 more.

21 Q How did you pick that number?

22 A Basically, I was looking at the

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1 distribution of contributions, and there did seem
2 to be a fall off after 250. But the truth is, if
3 I had looked lower, it wouldn't have made a
4 substantive difference in the analysis.

5 Q You also make an indication -- I'm
6 looking on page 25, sir -- you make an indication
7 that \$250 in contributions from two or more other
8 candidates who ran for city council during this
9 period.

10 A That's correct.

11 Q How did you decide two or more was the
12 appropriate threshold?

13 A Well, you wouldn't want one because that
14 really, you know, would be marginal for a slate,
15 but you wouldn't want to restrict it too much; so
16 two is a reasonable way of looking at it.

17 Q I want to turn your attention now to
18 Tables 5 and 6 on the next two pages that I
19 believe are tables you relied on to come to your
20 conclusion of informal slating.

21 A Right.

22 Q I want to go down to -- on Table 5 on

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1 page 26. Shannon Kain.

2 A Okay.

3 Q Are you aware that Amelia Ross-Hammond
4 donated \$100 to Ms. Kane?

5 A That's certainly possible.

6 Q And for Rosemary Wilson, the
7 second-to-the-last column on that table, are you
8 aware that Ms. Ross-Hammond in 2016 donated \$200
9 to Ms. Wilson?

10 A It's certainly possible.

11 Q Assuming that's true, does that change
12 your opinion in any way?

13 A No.

14 Q As to Table 6, you are aware that Aaron
15 Rouse was an African American candidate in 2018
16 for Virginia Beach city council, correct?

17 A That's correct.

18 Q Are you aware that Ben Davenport donated
19 \$1,500 to Aaron Rouse in --

20 A Yes.

21 MR. HEBERT: If I could, Dr. Lichtman,
22 try to let him finish his question, and he'll let

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1 you finish your answer before he talks. The tape
2 will read much smoother later.

3 THE WITNESS: I thought he was finished.

4 Q Can I assume the reason Aaron Rouse was
5 not included on this chart is because only
6 Mr. Davenport supported his candidacy, therefore,
7 he did not meet the two or more standard you've
8 set?

9 MR. HEBERT: Object to the form of the
10 question.

11 A As far as I can recall, that's true.

12 Q And Ms. Bright was an African American
13 candidate in Virginia Beach.

14 You recall that from your report?

15 A It's bolded right there.

16 Q Are you aware that Will Sessoms donated
17 \$250 to her candidacy and Ms. Ross-Hammond donated
18 \$150 to her candidacy?

19 A That's possible.

20 Q Assuming that's correct, does that
21 change your opinion in any way?

22 A No. I think my \$250 threshold was

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1 reasonable, and if you went below that, you'd have
2 to redo the entire table. You can't just pick and
3 choose.

4 Q On this chart, do you have an
5 understanding or knowledge of what percentage of
6 all contributions from these council raises
7 constitute those contained in this chart?

8 A I was looking --

9 MR. HEBERT: Objection. I'm not clear
10 what chart you're on because we were talking about
11 charts 5 and then 6.

12 MR. HARRIS: I'm sorry.

13 Q I should have said, in reference to
14 Tables 5 and 6, are you aware of what percentage
15 of the total contributions are contained in Table
16 5 and 6?

17 A No. That wasn't the purpose of my
18 analysis.

19 Q Would it be surprising to you that that
20 constitutes less than one percent of all
21 contributions?

22 A That may be. It doesn't matter.

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1 Q It doesn't affect your opinion?

2 A No. I wasn't looking at that. I was
3 simply looking at the degree to which you have
4 these informal coalitions, and \$350 is not
5 insignificant in a local race like this.

6 Q Dr. Lichtman, you've done an analysis in
7 this case of the socioeconomic outcomes for
8 blacks, Hispanics, and Asians in Virginia Beach,
9 correct?

10 A That's correct.

11 Q You spend -- I hesitate to use an
12 adjective, but you spend a good bit of your report
13 comparing the socioeconomic outcomes of blacks,
14 Hispanics, and Asians to whites.

15 MR. HEBERT: Object to the form of the
16 question.

17 A It's actually not a good bit of my
18 report because almost all of it is tables and
19 charts. The actual discussion is quite brief.

20 Q Well, I want to talk about -- it appears
21 to me it begins on page 28.

22 A That's correct.

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1 Q And it's your opinion in this case that
2 historical and current discrimination of blacks,
3 Hispanics, and Asians affect their -- affect them
4 in areas of education, employment, and health.

5 A It's more than that.

6 Q More than that?

7 A Much more than that.

8 MR. HEBERT: Object to the form of the
9 question.

10 Q You produced a series of tables and
11 charts, and it appears from page 28 that those --
12 it's Table 7 through 9 and Charts 3 to 9 in your
13 report.

14 A That looks correct.

15 Q You provided at the beginning of the
16 deposition two updated charts to your rebuttal
17 report.

18 Do you have any updates or changes to
19 this section of your report?

20 A No.

21 Q I'm looking at the final paragraph of
22 page 28.

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1 You indicate, Disparities between
2 non-Hispanic whites and Hispanics emerge for every
3 measure but the availability of the (inaudible).

4 A That's correct.

5 Q And you identified a disparity between
6 non-Hispanic whites and African Americans for
7 every measure.

8 A That's correct.

9 Q My count of the measures in these tables
10 is a total of 15 factors.

11 A I'm not going to dispute that. I'm not
12 going to go back and count, but that sounds right.

13 Q You indicate that disparities emerge for
14 Asians on per-capita income, poverty, welfare
15 assistance, the availability of health insurance,
16 and home value in the last sentence of page 28.

17 A That's correct.

18 Q I identify that as five factors.

19 A That's correct.

20 Q Discussing per-capita income as it
21 relates to Asians, it appears on Table 7 that the
22 per-capita income of Asians are less than white

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1 but the median household income of Asians is
2 greater than whites.

3 A That's correct.

4 Q Do you have an opinion about that
5 disparity?

6 A Bigger families, bigger households.

7 Q Speaking to poverty rate, you've
8 identified a disparity between whites and Asians
9 with Asians at 7.4 percent and whites at
10 5.8 percent.

11 A That is correct.

12 Q You would agree with me that the Asian
13 poverty rate is closer to the white poverty rate
14 than it is to the black and Hispanic poverty rate?

15 A Mathematically, that's true; but that's
16 not what I'm looking at.

17 Q What are you looking at when you
18 indicate there's a disparity as to that --

19 A Just looking at the differences between
20 Asians and whites. The fact that Hispanics and
21 blacks are even more burdened by poverty does not
22 wipe out the fact that the Asian poverty rate is

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1 28 percent higher than the white poverty rate.

2 Q You said 28 percent?

3 A Right.

4 Q How do you come to that number?

5 A 1.6 divided by 5.8 --

6 Q I'm with you, I just want to make sure.

7 A Okay.

8 Q All I'm trying to do is make sure that
9 the math I'm doing in my head is the same math
10 you're doing over there.

11 A Well, I can't do it in my head. That's
12 why I have my calculator.

13 Q That's why I asked you how you came up
14 with it.

15 A Very good.

16 Q You did not indicate a disparity on this
17 chart for unemployment rates.

18 I presume that's because the point
19 estimate for unemployment for Asians is actually
20 lower than whites?

21 A They're essentially comparable. You're
22 talking about 4/10s of 1 percent. There's no

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1 difference there.

2 Q Dr. Lichtman, let's be clear because I
3 messed this up once already.

4 Percentage versus percentage point --

5 A Yes.

6 Q -- there's a difference between those
7 two things?

8 A Correct.

9 Q I as a lawyer don't understand that
10 different. Can you help me understand that
11 difference?

12 A Yes. Let's look at the poverty rate for
13 Asians and whites. Okay?

14 Asians have a poverty rate that is 1.6
15 percentage points higher than whites; but, because
16 you're starting at a low rate of 5.8, 1.6
17 percentage points is 28 percent higher than the
18 white rate.

19 Q Did you calculate the percentage
20 difference -- percentage rate difference when you
21 came to your conclusions as to the factor 5?

22 A I had it in mind. I didn't think it was

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1 necessary to calculate it because it's pretty
2 obvious from this table what's comparable and
3 what's ahead or behind for Asians and whites.

4 For example, median household income is
5 comparable, unemployment rate is comparable, and
6 all the other measures Hispanics are -- excuse me,
7 Asians are behind whites.

8 Q If I understand your testimony, then,
9 you've identified four categories on this Table 7
10 where you've identified a disparity between Asians
11 and whites?

12 A Four categories where there's a
13 disparity; two categories where they're
14 comparable.

15 Q The date range on this table is 2011 to
16 2015. I assume that's because the American
17 Community Survey only reports this data from that
18 time frame?

19 A That's what I could find. That can't.

20 Q Did you do a search for any more recent
21 data?

22 A I didn't see more recent data at this

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1 level of detail when I did it. You know, it may
2 be updated -- it's certainly possible -- since
3 then.

4 Q When you did your analysis of Table 7,
5 did you consider the national averages for these
6 measures?

7 A No. It's irrelevant. In other words,
8 whatever the national average is, that doesn't
9 wipe out the burdens on minorities from their
10 disparities with lives in Virginia Beach.

11 Q I'm going to turn your attention to
12 page 33, Table 8, please.

13 A Uh-huh.

14 Q Doesn't it appear from your conclusions
15 regarding disparities between Asians and whites
16 that there are any disparities that you've
17 identified on this table between Asians and
18 whites; am I correct about that?

19 A Well, if you look at the table overall,
20 it kind of balances. I think that's what I say.
21 You know, looking kind of panoramically at
22 education, you can't make a claim one way or

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1 another.

2 Q Turn your attention now to Table 9,
3 please.

4 You identified in your written summary
5 that there was a disparity between home value for
6 Asians and whites. That's reflected here in the
7 chart as 253,400 and 273,700?

8 A Yes.

9 Q Because you did not include it in the
10 identified disparities, can I assume that you did
11 not find a disparity between percent owner
12 occupied and percent with no vehicle?

13 A Yeah. They're pretty much the same.

14 Q By my count, then, Dr. Lichtman,
15 approximately 5 of the 15 factors or one-third of
16 the measures show a disparity for the Asian
17 population between the white population?

18 A That's correct. And the others are
19 basically comparable.

20 Q Dr. Lichtman, I want to talk now about
21 racial appeals in Virginia and Virginia Beach.

22 A Fair enough.

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1 Q Identified as factor 6 in your report,
2 sir?

3 A That's correct.

4 Q You begin with the 2006 campaign for
5 U.S. senate?

6 A That's correct.

7 Q In your consideration or your opining on
8 overt or subtle racial appeals, do you give more
9 weight to more recent appeals than older appeals?

10 A To a small degree. But it's not like
11 I'm going back to the 19th century here for
12 appeals. None of these are particularly that old.
13 And the fact that these appeals span a period of
14 more than a decade I think is also significant.

15 Q You identify the comment of Macaca,
16 M-A-C-A-C-A, as a racial slur --

17 A Correct.

18 Q -- in this report.

19 This was a comment made by George Allen
20 to an individual by the name of Sidarth?

21 A Yes.

22 Q As reported by the article you cite here

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1 on Footnote 35?

2 A It's a video.

3 Q Oh, I'm sorry, you're right. YouTube
4 video you site.

5 A But as you know, this was covered
6 extensively all over the country.

7 Q I understand it occurred at Breaks
8 Interstate Park on the Kentucky/Virginia border?

9 A I have no reason to dispute that. I
10 don't -- I'm not sure I identified exactly where
11 it occurred because it's not relevant.

12 Q The distance between where it occurred
13 and the City of Virginia Beach is not relevant to
14 your analysis?

15 A No, because this was so widely
16 disseminated across Virginia and across the
17 nation. We live in a -- even back in 2006, we're
18 in a digital age. Physical distance doesn't mean
19 much anymore.

20 Q Would you use the 2006 incident with
21 George Allen as evidence of an overt racial appeal
22 in any jurisdiction in Virginia then?

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1 A I think it's an overt racial appeal for
2 someone who's running statewide in Virginia and,
3 therefore, has implications for all the localities
4 within Virginia.

5 Q You also reference this Halloween 2011
6 Loudoun County flier.

7 A Yes.

8 Q It's actually included on page 38 of
9 your report.

10 A That's right.

11 Q Would you categorize this as an overt
12 racial appeal?

13 A I think anyone looking at that picture
14 would reach that conclusion.

15 Q What is the racial appeal of that flier?

16 A The racial appeal is, you know, that
17 Obama is associated with zombies and creatures,
18 looks like a zombie or a creature. Right smack in
19 the middle of the picture, it has a bullet hole in
20 his head. That's a pretty grotesque way to
21 portray the President of the United States who
22 happens to be the first African American president

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1 we've ever had.

2 Q Am I correct that the individual in the
3 bottom right-hand corner of that flier is Nancy
4 Pelosi?

5 A That is correct.

6 Q Who's also depicted as a zombie in this
7 flier?

8 A Correct. But Obama is front and center.

9 Q Is it your opinion that any depictions
10 of violence on President Obama would be an overt
11 or subtle racial appeal?

12 A I'm always reluctant to make 100 percent
13 statements, but certainly prima facie it would be.

14 Q You've identified in your written report
15 that this was on Halloween of 2011?

16 A I think that's right.

17 Q Knowing that there's a Halloween theme
18 to this emailed image, does that change your
19 opinion in any way?

20 A In a sense it strengthens it. They're
21 exploiting Halloween to demean the African
22 American president.

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1 Q You would agree with me that it's also
2 demeaning, then, to Speaker Nancy Pelosi?

3 A Yes. But it's Obama who's the president
4 and Obama who's front and center. And if you look
5 at the figures, you know, near Obama, a lot of
6 them tend to be quite dark.

7 Q The individuals in the top-right corner
8 appear to be white.

9 Would you agree with that assessment?

10 A Both. But predominantly white, that's
11 correct. But the really grotesque figures are
12 dark.

13 Q You go on in your report on page 39 to
14 reference the removal of confederate statues in
15 the Corey Stewart 2017 gubernatorial race. I'm
16 looking at the second paragraph down.

17 A Where are we?

18 Q Second paragraph down on page 39.

19 A Yeah.

20 Q Is it your opinion that discussions by
21 candidates of removal of confederate statues can
22 be seen as overt or subtle racial appeals?

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1 A They're subtle. And not every
2 discussion of confederate monuments is, but I
3 think I provide the context showing why what
4 Stewart was saying and doing was.

5 Q I understood your testimony to be that
6 there is at least some distinction where a
7 discussion of removal of confederate statues may
8 not be an a racial appeal.

9 A That's possible. I'd have to look at
10 it, but this one clearly is.

11 Q In your initial report, you've
12 identified two instances that you identify as
13 racial appeals specifically in Virginia Beach.

14 And I've now turned to page 40 of your
15 report.

16 A I'm with you.

17 Q You begin that paragraph with, There are
18 at least two instances.

19 I want to talk about those two
20 instances.

21 A Okay.

22 Q The first you identify is a 1998

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1 incident with Louisa Strayhorn. You cite an
2 article in Footnote 46 recounting that incident.

3 A That's correct.

4 Q Do you have any other source information
5 for this incident? Have you spoken to
6 Ms. Strayhorn, for example?

7 A No. But she's directly quoted there.
8 And I think, you know, more contemporary
9 evidence -- and I -- it's not just one article
10 that I cite. I think I cite at least two. And
11 more contemporary evidence I think is usually
12 better than waiting, you know, subsequent to that;
13 although, that wouldn't be irrelevant either.

14 Q Does any of the articles you've cited or
15 from your own independent research indicate that
16 any of the individuals responsible for those
17 statements were from political campaigns?

18 A We don't know who they are apparently,
19 and people making those kinds of threats would not
20 likely identify themselves. But it's an
21 indication of racial issues within Virginia Beach,
22 which is, I think, what the factor is pointing to.

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1 Q Were you able to identify any other
2 similar incidents more recent than 1998 in your
3 research?

4 A Well, I just read a deposition -- it
5 just came out -- by Mr. Moss in which there is
6 mention of -- I don't think it's more recent. I
7 don't even know the date. It may even be a little
8 older -- about categorizing a group of candidates
9 that included an African American as monkeys and
10 then more recently reference to giving out
11 color-coded ballots to members of different racial
12 groups.

13 Q Let's talk --

14 A I just saw that, and I really haven't
15 had a chance to fully run it down.

16 Q Do you expect to do further
17 investigation of those two incidents?

18 A If asked.

19 Q As you sit here today, you haven't been
20 asked to do that?

21 A I have not. This just came to my
22 attention the last day or two.

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1 Q You then, after the Louisa Strayhorn
2 incident, reference a 2017 House of Delegates
3 election regarding Rocky Holcomb.

4 A Yes.

5 Q I want to turn your attention to the
6 last sentence of the last paragraph on page 40.

7 And that sentence read, The ad shows a
8 dark hand over the mouth of a little girl who
9 clearly appears to be white.

10 A Yes.

11 Q Is that your opinion?

12 A Yeah. And but -- you can judge for
13 yourself. The hand is much darker than the face.

14 Q You use the adjective dark.

15 Are you meaning to say that the hand
16 belongs to a person of color?

17 A It looks like it.

18 Q Does it appear to you to be the hand of
19 an African American?

20 A Hard to tell.

21 Q Does it appear to you to be the hand of
22 an Asian?

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1 A It could be. It doesn't look Asian, but
2 it could be Hispanic, it could be African
3 American, it could be mixed race.

4 Q Do you leave open the possibility that
5 it's actually a white hand?

6 A If it was a white hand, why would it be
7 so much darker than the face of the white girl?
8 If they meant it to be white on white, they
9 wouldn't use this picture.

10 Q What do you define as the racial appeal
11 of that photograph?

12 A That Ms. Turpin is soft on predatory
13 criminals who is implied are people of color.

14 Q Do you -- I'm sorry, I thought --

15 A No, that's it.

16 Q Are you familiar with the ad of
17 President Bush regarding Willie Horton?

18 A I am.

19 Q Do you equate what's occurring in this
20 ad to what was occurring in the Willie Horton ad?

21 A It's similar; although, in the Willie
22 Horton ad, I think it was more overt. This one is

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1 a little subtler; with you we're looking for both
2 the most overt and more subtle racial appeals.
3 But this isn't very subtle. To say it's more
4 subtle than Willie Horton, you know, is like
5 saying an atomic bomb isn't as bad as a nuclear
6 bomb.

7 Q But suffice it to say that it is your
8 opinion that this hand on page 42 is a hand of a
9 person of color?

10 A It looks that way, yeah. I mean, as I
11 said, if they mean it to imply that, they wouldn't
12 have had the contrast between the white girl and
13 the much darker hand. It's pretty blatant.

14 Q Are you aware that Mr. Holcomb's
15 campaign denied that that was ever the intention
16 of this photograph?

17 A You know, people deny things all the
18 time that they do.

19 Q Are you aware of any civil rights groups
20 who spoke out against this flyer?

21 A I'd have to look. It doesn't ring a
22 bell with me. But it caused quite a stir. I

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1 think even your own expert admitted that.

2 Q Are you aware of the NAACP condemning
3 this advertisement?

4 A I don't recall. It's possible, but I
5 don't recall that.

6 Q Are you aware of the ACLU condemning
7 this advertisement?

8 A I think you asked me if I recall any
9 particular group condemning it, and I don't.

10 Q And you understand that Ms. Turpin won
11 that election?

12 A Yes. I mean, of course, many factors go
13 into who wins and loses an election. She won
14 barely, just by a few hundred votes. And the
15 factor does not ask whether the racial appeal led
16 to a victory or defeat, just whether it's
17 indicative of racial issues.

18 Q Do you have any evidence, as you sit
19 here today, that that advertisement garnered more
20 support for Rocky Holcomb in Virginia Beach?

21 A No way to tell. There's so many things
22 that go into who wins and loses. And that's not

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1 the purpose of the factor to decide, how a racial
2 appeal may or may not have affected the election.
3 Very difficult analysis to do and not asked for.

4 Q Your rebuttal report contains another
5 flyer.

6 A That's correct.

7 Q That's the Sessoms flyer. Can we -- I
8 hate to jump reports --

9 A That's okay. Just tell me what page
10 you're going to.

11 MR. HARRIS: If someone finds it before
12 me, please speak up.

13 A I got it. I think it's on page 33.

14 MR. HEBERT: I have 34.

15 MS. HARLESS: You discuss it on 33, but
16 it's on 34 and 35.

17 A It's on 34 and 35.

18 Q For the record, we're on page 34 and
19 moving over to page 35.

20 It's your opinion in this case,
21 Dr. Lichtman, that this flyer depicted on page 34
22 and 35 is a racial appeal?

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1 A Yeah. No attribution. That wasn't
2 anything approved by the Sessoms campaign or any
3 other campaign. And it's associating Sessoms with
4 the African American mayor. And then you've got
5 to put it in the context with the second
6 unattributed flyer which makes up this phony
7 organization, African Americans for Change, which
8 further attempts to associate Sessoms with African
9 Americans.

10 I think putting the two together,
11 there's no question these are racial appeals.

12 Q Do you -- would you describe them as
13 overt appeals or subtle appeals?

14 A They're pretty overt.

15 MR. HEBERT: And, Jerry, if I can
16 interject just quickly here, I believe that the
17 testimony that he gave he said that Mr. Sessoms --
18 and maybe I misheard it -- was pictured with an
19 African American mayor, but I think he meant to
20 say African American president.

21 THE WITNESS: Right. Sessoms is the
22 mayor, obviously, and Obama is the President. If

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1 I misspoke it's just dyslexia from age.

2 Q I want to turn your attention to page 33
3 and the last sentence of that second paragraph.

4 A Okay.

5 Q Your statement is, These were unabashed
6 and deceitful racial appeals to black voters, and
7 the flyer attempted to associate Sessoms with
8 Obama and the so-called African Americans for
9 Change.

10 Can you tell me what you mean when you
11 use the phrase unabashed and deceitful?

12 A Well, they're obviously deceitful
13 because they're breaking the law. Whoever is
14 doing this is not identifying themselves, and
15 that's illegal. And I explain why they're
16 unabashed. I mean, what could be more obvious
17 than what's being said here and shown here.

18 Q Is it your opinion that Mayor Sessoms
19 was falsely claiming an alliance with President
20 Obama?

21 A It may just have been Sessoms
22 supporters. It may not have been Sessoms himself.

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1 There's no way of knowing. That's why the law
2 says you have to have attributions and why this is
3 so deceitful.

4 Q But is it your opinion that Mayor
5 Sessoms or his supporters were trying to falsely
6 claim an alliance with President Obama?

7 A Yes. It certainly is pretty obvious
8 from here. And an alliance with this phony
9 African Americans for Change.

10 Q Are you aware that Mayor Sessoms has
11 historically supported Democrat candidates?

12 A I don't know.

13 Q Would that change your opinion if he's
14 previously supported Democrat candidates?

15 A Well, if he wanted to be associated with
16 Obama, he could have put out his own legally
17 permissible flyer, explained it; and he certainly
18 would not have made up some phony organization
19 with purported support from that organization,
20 which is African American to Sessoms.

21 This is not something any respectable or
22 responsible candidate would do.

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1 Q Do you know who was responsible for
2 distributing that flyer?

3 A No way to know. That's the whole point.
4 They hide themselves by not putting the proper
5 attribution. But this is a pretty overt racial
6 appeal, whoever is behind it.

7 Q If the flyer had attributed it to Mayor
8 Sessoms; if it would have said at the bottom, Paid
9 for by friends of Will Sessoms, would you still
10 categorize it as a racial appeal?

11 A In combination with making up a phony
12 African American organization, absolutely.

13 Q Do you know if Mayor Sessoms and his
14 campaign is responsible for the contents of that
15 advertisement?

16 A You already asked me that. The whole
17 purpose of these kinds of things is to put out
18 these illegal publications with no attribution so
19 you can't point the finger at Sessoms or anyone
20 else.

21 Q Are you aware that Mayor Sessoms
22 publicly left the Republican party of Virginia

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1 Beach?

2 A No.

3 Q Are you aware that Mayor Sessoms has
4 been identified as the candidate of choice of
5 African American voters by Dr. Spencer in his
6 report?

7 A That's possible. Yeah, he's been
8 supported by African American voters, and maybe
9 this contributed to it. Who knows?

10 Q Assuming this was a flyer by Mayor
11 Sessoms to garner support of the African American
12 community, if his desire for support of the
13 African American community was in earnest, would
14 you still call it a racial appeal?

15 A I don't understand your question. And
16 to the extent I do, I think I already answered it.
17 If this was a forthright, honest attempt by Mayor
18 Sessoms to explain why he was supportive of
19 African Americans, there would have been more than
20 just a picture. I think there would have been
21 some explanation. There would have been an
22 attribution line. And there certainly would not

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1 have been the fabrication of a phony African
2 American organization.

3 Q Dr. Lichtman, do you draw a distinction
4 or any meaningful difference between racial
5 appeals that are positive in nature versus those
6 that are negative in nature?

7 A Sure. There can be a distinction. But
8 here we're not talking about a forthright,
9 positive appeal. We're talking about deceitful
10 attempts to bamboozle the electorate.

11 Q Have you studied the positions that are
12 stated on this flyer on page 35?

13 A No. It's not relevant because it's
14 attributed to a phony organization. Whatever
15 these positions may be, to attribute it to a phony
16 organization is obviously deceitful; and that's
17 why there's no attribution line, since nobody
18 wants to be held responsible for deceiving the
19 electorate.

20 Q Would it change your opinion in any way
21 if it was shown to you that the issues identified
22 on page 35 were, in fact, issues brought forth by

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1 Mayor Sessoms himself?

2 A No. Not when they're attributed to a
3 fabricated group and associated with African
4 Americans in that way.

5 Q Did you do a search for the group
6 African Americans for Change?

7 A Yeah. And I couldn't find such a group.

8 Q Where did you conduct your search?

9 A Just a Google. And, you know, if that
10 was a legitimate organization that existed, their
11 attribution line would be there. That's any of.

12 Q What about the flyer leads you to
13 conclude that this is an organization or purports
14 to be an organization?

15 A The very big banner headline, African
16 Americans for Change in Virginia Beach. That
17 looks like an organization. And I think, you
18 know, common sensically, it certainly could be
19 interpreted that way. That's, you know, a common
20 name of organizations. You know? Citizens United
21 For Change. That's a common way in which
22 organizations describe themselves.

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1 Q I understand that you're a particular
2 historian particularly for presidential politics.

3 Would you agree with that?

4 A I am a political historian, certainly
5 not limited to presidential politics.

6 Q You spent much of your career at least
7 opining and studying presidential politics?

8 A That's correct but not exclusively.

9 Q I understand. I certainly don't want to
10 limit the scope of your expertise.

11 A Thank you.

12 Q The 2008 election for the mayor, at that
13 point President Obama had used a frequent refrain
14 in his presidential campaign that often included
15 the word change.

16 A Hope and change.

17 Q I want to talk about the 2018 election
18 in the City of Virginia Beach.

19 A What page are we on?

20 Q I believe that factor is factor 7 on
21 page 43.

22 A That's correct. So we're talking about

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1 the rebuttal report or the initial report?

2 Q Well, I want to -- unfortunately, I've
3 got to jump --

4 A I don't mind that. Just orient me where
5 you're going first.

6 Q First we're going to go to your initial
7 report.

8 A Very good.

9 Q On page 43, the short paragraph that
10 begins in the middle of the page, In 2018.

11 Do you see that?

12 A I do.

13 Q Two African Americans were elected to
14 city council. And then you go on to say that
15 these elections occurred during the pendency of
16 the current lawsuit, a special circumstance for
17 the election of members of a minority group.

18 A Is there a question or --

19 Q I just -- that's your opinion as stated
20 in this report. I want to confirm that it is
21 still your opinion, as you sit here today, that
22 the -- the 2018 election is a special

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1 circumstance, as you put it.

2 A No. What I said was the pendency of
3 elections occurring during the pendency of a
4 current lawsuit is a special circumstance for the
5 elections of members of a minority group.

6 Q Is it your opinion in this case that the
7 pendency in this lawsuit contributed to the
8 victories of Aaron Rouse and Sabrina Wooten?

9 A Yes.

10 Q Can you tell me what --

11 A At this point -- I just want to
12 clarify -- at this point I'm simply talking about
13 the pendency of a current lawsuit being a special
14 circumstance. I then go on to explain how that
15 special circumstance operated for the elections of
16 Wooten and Rouse in Virginia Beach. I just want
17 to make that distinction clear. Those are two
18 different things.

19 Q Let's go to the second portion of the
20 explanation that you just gave, what makes this
21 election of Aaron Rouse and Sabrina Wooten
22 evidence of the special circumstance.

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1 A Very good.

2 Q Can you tell me in sum what evidence you
3 are relying on to come to that conclusion?

4 A I'm relying on evidence from votes,
5 comparing the votes for Rouse and Wooten with the
6 votes of other African American candidates. I am
7 relying on contributions, analyses of the
8 contributions to Rouse and Wooten from the major
9 donors in Virginia Beach, all of whom is white; as
10 well as the sources of contributions, particularly
11 substantial contributions to Rouse and Wooten,
12 almost all of which were from whites.

13 I was looking at the fact that it was
14 very unusual to elect two African Americans at the
15 same time. There had only been an occasional
16 election of one, none of which had ever been
17 reelected or, if appointed, had their appointment
18 ratified by an election. So there's an array of
19 information all of which is spelled out in this
20 report. And then there's further elaboration in
21 the rebuttal report.

22 Q I understand in your report -- and I

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1 apologize, I don't have a particular page number
2 to point you to here -- that you rely on the
3 support of whites for Sabrina Wooten at the level
4 of 51.1 percent as significant to your opinion.

5 A That's one of the many things that I
6 cite, that she was the only African American
7 candidate, I believe, of 20 or more or so -- I
8 don't remember the exact number, but something
9 around there -- over a period from 2008 to 2018
10 ever to get a majority of whites.

11 But that's just one little piece of it.
12 I do a much more extended analysis in which I
13 compare her vote to the vote for other African
14 American candidates running in districts.

15 Q You will recall that she ran against
16 Mr. Wray in that election in 2018, correct?

17 A I believe that's correct. I don't think
18 he's the only one she ran against, though. But we
19 can look at -- look at the actual election returns
20 and see. I might have something here. I'm not
21 sure. I'm quite sure the other 49 percent didn't
22 just go to Mr. Wray. There must have been another

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1 candidate in there. I can't recall the name.

2 Q Dr. Lichtman, I'm going to show you
3 what's contained in Dr. Douglas Spencer's expert
4 report submitted July 15, 2019, on page 12.

5 I don't intend to mark this as an
6 exhibit for your deposition, but I want to know if
7 that helps you refresh your recollection as to
8 what the results were in the 2018 election.

9 MR. HEBERT: Counsel, can you have him
10 also look at page 14?

11 MR. HARRIS: Yes.

12 A That's where I'm going. Yes, there was
13 another candidate in the race, and that was
14 Schesventer; so it was a three-way -- it was a
15 three-way race.

16 Q What was the white support for Mr. Wray
17 in that election?

18 A 43 percent.

19 Q Is that significant to you for any
20 reason?

21 A That's pretty high white support for an
22 African American candidate, yes.

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1 Q Would you consider --

2 A On the other hand, that's got to be put
3 in the context of the fact that he got almost no
4 black support; whereas, Wooten got almost all the
5 black vote. So it might not be that surprising in
6 that context that this was not a candidate who
7 represented the black community.

8 Q Do you have any information or evidence
9 as to why Mr. Wray, an African American candidate,
10 received so little support of the African American
11 community?

12 A I can't say specifically why; but
13 generally, when you see that, it's because he's
14 out of step with the African American community --
15 or she -- in some way or another. But that's just
16 from general knowledge not from particularized
17 knowledge of Wray.

18 Q And you reference the third candidate,
19 Schesventer, S-C-H-E-S-V-E-N-T-E-R.

20 Would you consider him a viable
21 candidate for that Centerville seat in that
22 election?

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1 A It looks like he got a very small amount
2 of the vote, but it's interesting that he got many
3 of the black vote than Wray did and more -- pretty
4 close to the minority vote that Wray got.

5 Q So would you consider him to be a viable
6 candidate for the Centerville district in the 2018
7 election?

8 A I don't know anything about the
9 campaign, but just looking at the numbers, he
10 doesn't seem like a candidate who's likely to win.

11 Q Dr. Spencer, I'm -- Dr. Spencer. You're
12 Dr. Lichtman. Dr. Spencer's report is what we're
13 looking at. I'm going to take that from you. We
14 don't want to --

15 A Is this it?

16 Q -- yes -- clutter the table more than it
17 already is.

18 Is it your opinion in this case,
19 Dr. Lichtman, that the threat of this pending
20 lawsuit was enough to rally the white vote?

21 MR. HEBERT: Object to the form.

22 A Yeah. I don't understand that question.

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1 Q Is it your opinion in this -- is it your
2 opinion that the threat of this lawsuit was enough
3 to rally the support of the white vote for African
4 American candidates?

5 MR. HEBERT: Same objection.

6 A Yeah. I can't answer it the way you
7 phrased it, but I can say what I said in this
8 report, that it certainly created unusual white
9 votes for black candidates.

10 Q If I understood your prior testimony,
11 it's the unusual white support in addition to the
12 amount of donations that were coming in on that
13 election that at least informed, in part, your
14 opinion?

15 A It wasn't just the amount of donations.
16 The analysis was much more extensive, and it had
17 to do with the race of the donor, who was
18 donating, how the donations compared to other
19 black candidates and even other white candidates.

20 Q Do you have any specific evidence that
21 those donors were aware of this lawsuit?

22 A I think I presented extensive evidence

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1 showing how commonly this lawsuit was reported in
2 the press. If you're a donor, you're going to
3 keep up with political developments in the area in
4 which you're interested.

5 Q In your research, were you ever able to
6 find any public statements by these donors that
7 referenced this lawsuit?

8 A I didn't see any, but I didn't
9 particularly look for that.

10 Q In your research, did you find any
11 public statements from city council members
12 specifically referencing this lawsuit?

13 A I think I did. I think there were some
14 council members who endorsed it or at least
15 endorsed the move to districts. At least two of
16 them. I do recall that.

17 Q Would you agree with me that there's a
18 difference between endorsing a move to a district
19 system and specifically endorsing a lawsuit?

20 A Yeah. But they're certainly related
21 since that's the aim of the lawsuit.

22 Q Did you do a search for any meetings or

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1 flyers related to this lawsuit on social media?

2 A Let me see. I might have; I might not
3 have.

4 I cited both print media and broadcast
5 media. I think this was mostly in my supplemental
6 response report, page 36. So -- one, two, three,
7 four, five, six, seven -- and I did find in social
8 media a question posed to 2018 candidates for city
9 council in Virginia Beach from the Princess Anne
10 Independent News which asked, quote, Voters from
11 across the city select members of the city
12 council, including members who represent district
13 seats should the city consider another way of
14 selecting members of the council such as award
15 system.

16 So I both cite specific references to
17 the lawsuit as well as references to the issue,
18 which was obviously very much present in the
19 community of switching to at-large seats. Then I
20 go on to cite other articles relating to that. So
21 certainly this was very much present within
22 Virginia Beach.

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1 Q Based on the timing of the articles that
2 you've cited, it appears that only Ms. Holloway's
3 pro se complaint had been filed at that time.

4 Are you aware of the timing of the
5 filing of the amended complaint in this case?

6 A I don't recall the timing of the finding
7 of the amended complaint, no. My citations that I
8 have here go from November of 2017, when the
9 complaint was filed, to close to the 2018
10 election, which is the relevant period.

11 Q Are you aware that the amended complaint
12 was not filed until after the November 2018
13 election?

14 A That's certainly quite possible.

15 Q Are you aware of the differences between
16 the initial filing by Ms. Holloway as a pro se
17 litigant and the formal filing by Campaign Legal
18 Center's amended complaint?

19 MR. HEBERT: I'm going to object to the
20 form of the question.

21 MR. HARRIS: Let me ask it a different
22 way.

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1 Q Have you seen the pro se complaint that
2 was filed by Ms. Holloway?

3 A If I did, I don't remember it; but
4 here's WTKR saying that she's challenging the
5 at-large election system, which is fundamentally
6 what the later complaint was challenging.

7 Q In addition to the periodicals and print
8 media that you've cited, were you able to cite any
9 further evidence of community members or community
10 leaders talking about the Holloway lawsuit?

11 A Well, the Princess Anne questionnaire
12 didn't specifically reference a lawsuit, but it
13 did reference this issue of selecting members of
14 the council. An editorial in the Virginian-Pilot,
15 February 1st, violations of the Voting Rights Act.
16 Another article specifically refers to council
17 members who are among the group of residents
18 challenging the city's election system. So those
19 are some examples and --

20 Q Dr. Lichtman, I'm sorry. I think my
21 question was unclear, and that's my fault.

22 A Oh.

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1 Q I'm asking specifically whether you were
2 able to identify specific committee members who
3 spoke out related to this lawsuit.

4 MR. HEBERT: I'll object to the form of
5 the question. Committee members, did you say?

6 MR. HARRIS: Yes.

7 A Well, I think I referenced the two
8 council members, Jessica Abbott and John Moss, who
9 wanted to change the current system. I don't
10 recall if they specifically referenced a lawsuit
11 as opposed to ending at-large elections.

12 But certainly the lawsuit was pending at
13 that time, and they said they are among a group of
14 residents challenging the city's election system.
15 That's a pretty clear reference to the lawsuit.

16 Q You cited the New Journal and Guide in
17 your report on several of the footnotes that I
18 think you write in here.

19 A Yes.

20 Q You're aware that that's an African
21 American periodical?

22 A Yes. I'm just citing them for the

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1 information, not for their opinions.

2 Q And you cite Roger Chesley as an
3 individual responsible for certain editorials in
4 the Virginian-Pilot.

5 Are you aware that Roger Chesley is on
6 the editorial staff of the Virginian-Pilot?

7 A Where do I cite Chesley? I'm looking.
8 If you could orient me to the page, that would be
9 helpful.

10 Q Yes, sir. I'm sorry, I'm going off of
11 memory on that, not --

12 A That's okay.

13 Q Let's not waste any more time looking at
14 that. I'll see if we can find it. If not, we'll
15 move on to the next question.

16 A Yeah. That's fine.

17 Q Is it your opinion that the elections of
18 Aaron Rouse and Sabrina Wooten are not worthy of
19 consideration in this case because you call it a
20 special circumstance?

21 A You're putting words in my mouth. What
22 I'm saying is they are special circumstance

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1 elections; and, therefore, they should not be
2 probative of this factor which is the extent to
3 which members of the minority group have been
4 elected to public office in the jurisdictions,
5 particularly in light of the fact that no African
6 American has ever been reelected in the entire
7 history of Virginia Beach.

8 Q Dr. Lichtman, can I ask you to turn to
9 page 56 of your initial report, please?

10 A Certainly. Yep.

11 Q Table 14 appears to be a chart that
12 you --

13 A Oh, I'm looking at my rebuttal report.
14 I'm sorry. We're going back and forth here. Page
15 56?

16 Q Uh-huh.

17 A Yeah. This is a chart on contributions.

18 Q This is a chart you've prepared, but the
19 source data is from the Virginia Public Access
20 Project, correct?

21 A Correct.

22 Q You've identified the donor and the race

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1 of the donor in the far-left column?

2 A Correct.

3 Q And you identify first Bruce Smith as
4 the most significant donor to Aaron Rouse at
5 \$16,000.

6 In your report, you attribute that to
7 their association at Virginia Tech alumni and also
8 retirees or veterans of the National Football
9 League.

10 A I think I mentioned they're both -- had
11 that commonality, that's right, that this was
12 unusual for Bruce Smith to do that. That was a
13 very large amount of money for a city council
14 race.

15 Q Have you formed any opinion as to why
16 Bruce Smith may have supported Aaron Rouse at such
17 a high level?

18 A I mean, you can never just get into the
19 head of someone like that, but I think I explained
20 their commonalities. It may also be that Bruce
21 Smith is a developer and he wanted to challenge
22 other developers and thought Rouse would help him

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1 do that. I don't know if that's true or not; but,
2 you know, there are other possibilities.

3 Q Are you aware that Bruce Smith also
4 loaned \$5,500 to Aaron Rouse's campaign?

5 A I'm not, but that's certainly possible.

6 Q Assuming that's true, would that
7 strengthen your opinion regarding the connection
8 between Bruce Smith and Aaron Rouse?

9 A It would certainly cause -- well, I've
10 already said they had a strong connection.

11 Q Marie Finch is the next name now, and
12 it's indicated with UNK.

13 I take that to mean unknown race?

14 A I couldn't find out what that person's
15 race was.

16 Q Did you search for Marie Finch to find
17 out where she might live?

18 A I did all kinds of searches, and it's
19 not an uncommon name, and I just couldn't nail it
20 down reliably enough.

21 Q If Ms. Finch was a resident of the City
22 of Norfolk, would that be significant to your

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1 analysis?

2 A Not necessarily. You know, it's
3 certainly legal to make contributions across
4 cities. I mean, if you found her -- and I didn't
5 see anything in your expert report indicating that
6 he was able to correct the unknown to anything.
7 But if you found something, I'm happy to look at
8 it.

9 Q Well, I'm not referring to the race
10 unknown, I'm asking would it be significant to
11 your analysis if it was determined that Marie
12 Finch was a resident of the City of Norfolk?

13 A Not necessarily, no. It's not like
14 these cities are thousands of miles away.

15 Q Is there any reason to believe that a
16 citizen in the City of Norfolk would have concerns
17 over the City of Virginia Beach's electoral
18 process?

19 A Of course. They could for many reasons.
20 They might have residents, friends, do business
21 there -- any number of reasons why they might.

22 Q The next individual you list is Steven

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1 Johnson.

2 A Yes.

3 Q He's listed as a white male.

4 A I didn't say anything about male.

5 Q I'm sorry, I shouldn't assume in this
6 day and age.

7 It's -- Steven Johnson is listed, and
8 it's only indicated as white.

9 A That's all the indications I did was
10 race. I didn't do gender.

11 Q What search did you perform to determine
12 the race of that individual?

13 A I searched the Virginia database that
14 we've already been talking about, I had one of
15 those programs that could search for individuals,
16 I asked counsel to consult local sources on my
17 assessment of the race of these individuals.

18 Q I'm certainly not going to inquire as to
19 your conversations with your counsel.

20 Are you aware that Steven Johnson is a
21 major supporter of Virginia Tech athletics?

22 A That's certainly possible.

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1 Q Are you aware that Steven Johnson is a
2 resident of Bristol, Virginia?

3 A Certainly possible.

4 Q Are you aware that Steven Johnson paid
5 for the practice facilities for the Virginia Tech
6 football program?

7 A Certainly possible. I'm not aware of
8 any of those things and didn't look at the
9 background of any of these people. I just looked
10 at their race.

11 Q Is it your opinion that the background
12 of these people don't make a distinction or a
13 difference in your analysis?

14 A I'm looking at patterns, and the pattern
15 is overwhelming that all of these major donors,
16 with Bruce Smith as an exception, which we've
17 talked about, are white. That was the analysis I
18 was looking at, period.

19 Q If you were to take a deeper analysis
20 and determine the number of individuals on this
21 list who were Virginia Tech alumni, would that
22 change your opinion if the number of Virginia Tech

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1 alumni on this list was, say, more than half?

2 A More than half of the whites?

3 Q Yes.

4 A Not necessarily. I'd have to listen to
5 exactly what that represented and why.

6 Q Do you understand that Aaron Rouse was a
7 football player at Virginia Tech?

8 A A long time ago.

9 Q Bruce Smith was a football player at
10 Virginia Tech; is that correct?

11 A I'm not sure. I know he was in the NFL
12 and was a Hall of Famer. I don't know where he
13 went to college.

14 Q Steven Johnson --

15 A And frankly, I'm not even positive about
16 Aaron Rouse. I mean, I'll take your word for it.

17 Q Are you aware that Steven Johnson was a
18 football player at Virginia Tech?

19 A I'm not.

20 Q And also went on to play in the NFL?

21 A I'm not.

22 Q Are you aware that Frank B. Gigoiotti,

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1 G-I-G-O-I-O-T-T-I, is also a Virginia Tech alumni?

2 A I'm not.

3 Q Is it possible in your mind or do you
4 leave open the possibility that many of these
5 donors are supporting a fellow Virginia Tech
6 alumni?

7 MR. HEBERT: Object to the form of the
8 question.

9 A I'm just looking at their race. I don't
10 see a lot of black Virginia Tech alumnus lining up
11 here. The pattern that unites them is not that
12 they're all Virginia Tech alums but that they're
13 all white. And some of them are companies.

14 Q Were you aware that Joseph W. Luter is
15 up from Smithfield, Virginia?

16 A That's certainly possible and not
17 relevant to my analysis.

18 Q Are you aware that Morchelle Pryor is
19 registered at Chesapeake, Virginia?

20 A I couldn't run down Morchelle Pryor. If
21 you've got some information about her or him, I'd
22 be happy to look at it. I didn't see anything in

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1 your expert report about any of this.

2 Q Is it your opinion that these individual
3 contributors's affiliation with Virginia Tech is
4 not meaningful in your analysis?

5 A The common pattern -- and they're not
6 just individuals. A good number of them are
7 companies -- the common pattern is they're white.
8 And you don't see that for others. And as I said,
9 a good number of them are companies.

10 Q Is it your opinion that the fact that
11 several of these individuals do not live in the
12 City of Virginia Beach, is that important to your
13 analysis?

14 MR. HEBERT: Object to the form of the
15 question.

16 A No. I explained why residents of other
17 places could have business dealings, friends,
18 relatives, may have lived in Virginia Beach at
19 some other time -- it's quite common to get
20 campaign contributions from people outside of the
21 particular jurisdiction where an election is
22 taking place.

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1 Q On the far-left column of your list of
2 donors, do you have any direct evidence of any of
3 these individuals speaking out against this
4 current lawsuit?

5 A I didn't look at that issue. I was just
6 looking at their contribution levels and their
7 race.

8 Q I'll turn your attention to page 57.

9 The donor column and race column is the
10 same on Table 15 in its location, but it appears
11 the names are at least somewhat different. And
12 you've done us the favor of showing us where it's
13 different and where it's not through the remaining
14 columns to the right.

15 Am I reading that correctly, that
16 Ms. Wooten's candidacy --

17 A What page are we on?

18 Q I'm on page 57 of the initial report.

19 A Okay. I'm with you there.

20 Q The second column, the amount column,
21 you're indicating the amount given to Sabrina
22 Wooten in that column, correct?

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1 A That's right.

2 Q And the remaining columns is a
3 comparison of what other candidates received from
4 that donor as compared to Ms. Wooten?

5 A That's correct.

6 Q You're not indicating that Rouse gave
7 \$2,500 for --

8 A No. I'm showing that, for every one of
9 these donors, they either gave nothing to these
10 other black candidates or gave far more to Wooten.

11 Q There's a name third down on your column
12 of donors of Bruce Thompson.

13 A Yes.

14 Q It does not indicate here that he
15 provided any money to Aaron Rouse.

16 A He may have, but it may have been below,
17 I think, the threshold I was looking at.

18 Q What was that threshold?

19 A I think it was, again, 250. I don't
20 think I looked at every single tiny contribution.

21 And it's not the same contributors. I'm
22 not arguing to Wooten and Rouse. But what is

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1 striking is in both cases the vast majority -- in
2 this case, all that could be identified are white
3 and either gave nothing or much less to any other
4 black candidate.

5 Q Did you do any further investigation
6 into where any of these donors may live on this
7 column?

8 A No. And I've explained why that's not
9 relevant.

10 Q Have you made any effort to reach out to
11 any of these individuals to find out whether they
12 even knew about this lawsuit?

13 A No.

14 Q Is that also true for Table 14? Have
15 you reached out to any of those individuals to
16 find out whether they knew of this lawsuit?

17 A No.

18 Q Dr. Lichtman, do you leave open the
19 possibility that Aaron Rouse was just a qualified
20 candidate who won the election?

21 MR. HEBERT: Object to the form.

22 A Yeah. That's not a question that is

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1 phrased in a way that's answerable. It's got
2 premises stuck into it. You'd have to rephrase
3 that to me to answer it. It's too loaded.

4 Q I'll try and rephrase it.

5 A Thank you.

6 Q Is it your opinion that Aaron Rouse was
7 elected as a result of an effort of the white
8 donors to defeat this lawsuit?

9 MR. HEBERT: Object to the form of the
10 question.

11 A Yeah. I'm not saying that's why he was
12 elected, but I am saying that we did have this
13 unusual white support for him which, in donations
14 and in the vote, certainly could be responsible
15 for his being elected.

16 Obviously there are other factors as
17 well, but when you look at the unusual white
18 support and the unusual white donations, that
19 suggests we are dealing with a special
20 circumstance of his election. There are plenty
21 other qualified black candidates, including
22 incumbents, who lost because they didn't get the

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1 kind of white support that Aaron Rouse did.

2 Q Dr. Lichtman, I'm going to try and
3 phrase this question in a way that doesn't confuse
4 the issue. But I understand your testimony to be
5 that there may not have been a cause and effect
6 relationship between this lawsuit and the election
7 of Aaron Rouse.

8 Am I understanding that correctly?

9 A No. There may well have been a cause
10 and effect relationship, and I think there
11 probably was. Were those the only factors? Well,
12 that I can't say, but the pendency of the lawsuit
13 and the white support in terms of money and in
14 terms of vote certainly means that you cannot use
15 this candidacy to refute the lack of election of
16 minorities in Virginia Beach.

17 Q In regard to Ms. Wooten, would you also
18 opine that there is a cause and effect and
19 relationship between the election of Ms. Wooten
20 and the pendency of this lawsuit?

21 A Again, I'll answer it in my words. I
22 certainly think there are unusual factors

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1 operating for the election of Ms. Wooten. All her
2 donors that we could identify were white. She had
3 incredibly unusual support from white voters and
4 the major white donors.

5 There didn't appear to be the
6 white-community sponsoring as it has in every
7 other district election, a strong white candidate.
8 And she got very unusual white support. So, yes,
9 again, I think there's enough going on here to
10 say -- not just because the pendency of a lawsuit
11 is a special circumstance but because of all of
12 these other factors, you cannot count the election
13 of Wooten against the lack of election of
14 minorities in Virginia Beach.

15 And, again, you need to put this all in
16 the context of the fact that never in the history
17 of the city has an African American incumbent been
18 reelected or an appointed African American
19 incumbent get elected on their own.

20 Q Dr. Lichtman, what I'm trying to get to
21 here is where your opinion is and where it is not.
22 And so let me try to phrase it in the negative.

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1 It is not your opinion that white voters
2 and white-owned companies banded together to mute
3 or stifle this lawsuit?

4 MR. HEBERT: Object to the form of the
5 question.

6 A I'm not arguing because I don't have the
7 evidence there was an overt conspiracy, but as the
8 sources I cite indicate, you don't need an overt
9 conspiracy. Is it my testimony that white voters
10 and white donors unusually -- very unusually
11 backed these African American candidates more than
12 sufficiently to make this a special circumstance?
13 Yes.

14 Q Do you believe Aaron Rouse and Sabrina
15 Wooten to be token candidates for the white
16 community?

17 MR. HEBERT: Object to the form of the
18 question.

19 A Yeah. I don't even know what that
20 means.

21 Q Do you believe that Aaron Rouse and
22 Sabrina Wooten were unknowingly propped up as

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1 white candidates of choice --

2 MR. HEBERT: Objection.

3 Q -- in 2019.

4 MR. HEBERT: I'm sorry, Counsel. I
5 didn't mean to interrupt you. I thought you were
6 done.

7 MR. HARRIS: That's okay.

8 MR. HEBERT: Object to the form of the
9 question.

10 A Unknowingly by whom?

11 Q By the white majority. These donors --
12 these white donors and these white companies that
13 you've identified.

14 A Well, unknowing in what sense. I don't
15 quite understand the question.

16 Q I understand your testimony to be that
17 the unusual amount of support from these white
18 donors individually and these white-owned
19 companies to be an indication of special
20 circumstances.

21 A That's correct that I've -- you know,
22 I've developed this in previous cases as well.

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1 This is not something that I developed for the
2 first time for this particular litigation.

3 Q And that's -- that's not my contention.
4 What I'm trying to get to is a phrase -- and I
5 think you used it already -- is this an overt
6 conspiracy? It's not your opinion that there was
7 some overt conspiracy amongst these individuals
8 and these companies to elect Wooten and Rouse, is
9 it?

10 A I don't have evidence one way or the
11 other on that, yeah.

12 Q Let's change gears to factor 8.

13 Do you want to take another break, or do
14 you want to --

15 A Let's take another break. This is a
16 good time before we move into another factor. I
17 just need five minutes.

18 Q Yes, sir.

19 THE VIDEOGRAPHER: We are going off the
20 record. The time is 3:57 p.m.

21 (Off the record at 3:57 p.m.)

22 (On the record at 4:06 p.m.)

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1 THE VIDEOGRAPHER: We are back on the
2 record. The time is 4:06 p.m.

3 MR. HEBERT: And while we were at the
4 break, for the record, I provided counsel for
5 Virginia Beach the NPR story that was requested
6 earlier today by counsel dated September 24, 2019,
7 entitled, Hostile environment for black workers
8 probed in Virginia Beach shooting investigation.

9 BY MR. HARRIS:

10 Q Dr. Lichtman, I'm not going to mark this
11 as an exhibit, but if you would, just flip through
12 this and confirm for me that that was, in fact,
13 the article you were referencing.

14 A That's it.

15 Q Thank you, sir.

16 A As I said, it wasn't necessarily the
17 only article I saw, but it was the one I
18 referenced to you.

19 Q All right. Dr. Lichtman, I want to talk
20 about factor 8.

21 A Yes.

22 Q And factor 8 begins on page 59 of your

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1 report.

2 A Yes.

3 Q Is it your opinion in this case that, in
4 a general sense, there is a lack of responsiveness
5 to the needs of the black, Hispanic, and Asian
6 community in the City of Virginia Beach?

7 A There was certainly evidence of that --
8 the disparities in contracts, hiring practices --
9 and I think I had previously referenced school
10 segregation and lack of minority teachers. And
11 then I also mentioned, I think, subsequent to the
12 filing of this report -- and we've been through
13 this at length -- articles and other indicia of a
14 hostile work environment for minorities.

15 So all that is certainly indicators of a
16 lack of responsiveness. And I didn't see any
17 counterevidence from your expert.

18 Q I want to make a distinction in
19 something you said there between your review of
20 articles and periodicals that allege a hostile
21 work environment versus you offering an opinion
22 that there is a hostile work environment.

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1 A That's fair.

2 Q Okay.

3 A That's fair. I can simply say that it's
4 being investigated. It's been reported. But I
5 can say definitively that your city manager
6 certainly has indicated severe racial
7 insensitivity, your former city manager. He
8 resigned under pressure. And that gives
9 credibility to the accusations.

10 Q And for the record, that resignation
11 occurred almost a year after the filing of the
12 amended complaint, correct?

13 A If you say so. I don't have those dates
14 in my head.

15 Q And that resignation had not occurred
16 yet at the time of the filing of your initial
17 report or your rebuttal report?

18 A That's right. That's why I said it's
19 new information since I filed these reports. I've
20 been pretty careful to distinguish between
21 information I had at the time and then subsequent
22 information.

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1 Q I understand. As part of your research
2 or analysis of factor 8, did you do any
3 independent analysis or investigation of the
4 city's -- City of Virginia Beach's boards and
5 commissions?

6 A No.

7 Q Did you look to the racial makeup of
8 those boards and commissions?

9 A Not that I can recall.

10 Q Is there any reason you wouldn't have
11 looked at the racial makeup of those boards and
12 commissions for the City of Virginia Beach?

13 A Well, they don't necessarily go to the
14 issue of responsiveness. It's more factors that
15 actually affect the lives of African Americans
16 within the city like the police, the schools, and
17 businesses.

18 Q You referenced police. And I think in
19 your rebuttal report you even make a chart and
20 some reference to the minority makeup of the
21 Virginia Beach Police Department.

22 A That may be in my main report. I'm not

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1 sure which.

2 Q And, frankly, Dr. Lichtman, I can't tell
3 you which one it's in either, but I know I read
4 it.

5 But you would agree with me that you at
6 least pointed that out in one of your reports,
7 that there is a dragging behind or a small amount
8 of minority police officers in Virginia Beach
9 compared to their relevant population in Virginia
10 Beach?

11 A Can I --

12 MR. HEBERT: Just for the record, this
13 is on page 59 of the original report.

14 THE WITNESS: I have it on page 64.

15 MR. HEBERT: If you go to page 59,
16 you'll see there's a narrative there.

17 THE WITNESS: There's a narrative that
18 runs from 59 to 63 and then a table on 64, which
19 does show the disparities. And, in fact, this was
20 highlighted in studies. This is not data that I
21 worked up. This is data I got from independent
22 studies.

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1 Q Did you work up any data regarding
2 recruitment fairs or recruitment efforts of the
3 Virginia Beach Police Department and minority
4 communities?

5 A I didn't work up independent
6 information; but, in fact, the U.S. Department of
7 Justice had to reach a consent decree with the
8 city to end the discriminatory hiring practice.

9 Q That was in 2006?

10 A That's correct. And then we had an
11 updated study which showed that the city was still
12 well behind in its hiring of minority police,
13 despite a much earlier consent decree. So there
14 was a follow-up as well.

15 Q Do you have any evidence that the City
16 of Virginia Beach Police Department is not
17 actively recruiting minority candidates to serve
18 on the Virginia Beach Police Department?

19 A You know, it's very difficult --

20 MR. HEBERT: Object to the form of the
21 question.

22 A Yeah. It's very difficult to figure out

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1 the actual hiring practices. The objective data
2 shows whatever they're doing is not working. They
3 may have an overt minority hiring program, but to
4 the extent to which it's actually put into
5 practice is another issue.

6 Q So to the extent that there is a
7 concerted effort to recruit minority candidates,
8 that effort doesn't change your opinion in this
9 case?

10 MR. HEBERT: Object to the form of the
11 question.

12 A That's not at all what I said. I don't
13 know if there is a concerted effort that's
14 effective to recruit minorities. There may be
15 paper policies, but the extent to which they're
16 put into effect is a whole other matter.

17 And although I didn't have the
18 information available then, the attitude of the
19 city manager, the possible hostile environment
20 towards minorities, would obviously be relevant to
21 assessing this.

22 Q Let's go back specifically to the

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1 recruitment efforts of minority candidates to the
2 Virginia Beach Police Department.

3 I want to talk specifically whether you
4 discovered any evidence of a recruitment effort
5 within the Virginia Police Department.

6 A I'm sure there is, as there is in every
7 city, a policy on that. But whether those
8 policies are on paper only or for show only but
9 are actually being effectively implemented is
10 another question which I can't answer. I'm not
11 sure anyone could. The objective data shows it's
12 not working and that there was past overt
13 discrimination.

14 Q In reaching your conclusions regarding
15 the lack of responsiveness of the City of Virginia
16 Beach to blacks, Hispanics, and Asians, did you
17 come across the Minority Business Council in your
18 research?

19 A I may have. I don't recall it
20 specifically. But I did look at minority
21 contracting.

22 Q In your research did you come across the

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1 Vision 2040 Committee?

2 A I might have. I don't recall the
3 details of it. Again, I was looking at concrete
4 results.

5 Q When you say concrete results, I'm not
6 sure I understand what you mean as it relates to
7 the responsiveness of the City of Virginia Beach?

8 A I mean not aspirational things, but how
9 do your allocations of contracts actually play out
10 when you're dealing with minorities? How does
11 your hiring of teachers and principals and police
12 actually play out when it comes to meeting the
13 needs of minorities? What kind of work
14 environment is there for minorities?

15 And I think I also earlier referred to
16 how are minority students being treated within
17 your schools. I didn't specifically stick that
18 under this factor, but it certainly applies to
19 this factor; although, I put it in another factor.

20 Q So stated another way, would you agree
21 that the responsiveness by the City of Virginia
22 Beach would include -- or have to include some

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1 positive trends towards improvement on these areas
2 you've identified?

3 A Well, that's why I looked at the
4 follow-up study to the hiring of minorities.
5 That's why I looked at the most recent data on
6 suspensions. That's why I looked at the very
7 recent disparity studied that was reported in
8 January 2019.

9 Q Is it your opinion that there's no
10 meaningful improvement in any of those areas?

11 A I'm not necessarily saying no
12 improvement, but I'm saying they're still lagging
13 behind in all of these areas, and that affects the
14 daily lives of African Americans.

15 And, again, I didn't see any dispute of
16 any of this in your expert report, and he's
17 someone who was in -- you know, identifies himself
18 as an expert in Virginia, per se.

19 Q Well, I'm asking you right now,
20 Dr. Lichtman, about your own reporting and your
21 own research. And I don't see a reference to, for
22 example, the Vision 2040 Committee in either of

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1 your reports.

2 A It's not in either of my reports. If
3 you want to tell me it's relevant, I'm willing to
4 listen.

5 Q Again, I don't see a reference to the
6 Virginia Beach Human Rights Commission in either
7 of your reports.

8 A That's correct. I'm looking at actual
9 concrete effects -- not commissions, not
10 aspirational committees, but what's actually
11 happening on the ground to African Americans, in
12 particular, in a whole host of indicators --
13 schooling, contracting, police, teachers, worker
14 environment -- these are the critical areas in
15 which Virginia Beach actually affects its minority
16 residents.

17 Q You've cited the Virginia Beach
18 disparity study I believe in both of your reports.
19 It's not so much important where it is in your
20 reports, but you've also used the phrase
21 aspirational goals.

22 Do you understand that there were

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1 aspirational goals set by the Virginia Beach
2 council in response to the disparity study?

3 A I'm sure there are. There are always
4 aspirational goals set when disparities like this
5 are affecting people's lives. But you know what?
6 That doesn't change. That doesn't wipe out all of
7 these disparities which directly had a negative
8 impact on the minority community.

9 Q If I told you that the Virginia Beach
10 city council set an aspirational goal of
11 10 percent in response to the disparity study,
12 would you have any reason to not believe that's
13 true?

14 A 10 percent of what?

15 Q Of contracting. Of contracts awarded.

16 A 10 percent of contracts awarded --

17 Q Minority contracts -- 10 percent of
18 contracts awarded by the City of Virginia Beach
19 would be minority-awarded contracts.

20 A It's a nice goal. We'll see what
21 happens down the road. But all we can -- you
22 know, what we have now is the minority community

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1 has been severely negatively impacted by these
2 disparities, and it took a lot of work to even get
3 a disparity study.

4 Q But, Dr. Lichtman, you would at least
5 agree with me that setting an aspirational goal is
6 at least some step towards being responsive to the
7 minority community, correct?

8 A Some step, but it doesn't wipe out what
9 I've analyzed here. And, you know, it will be
10 many years down the road before we see whether
11 that's just for show or means something.

12 Q Would it surprise you, then, to know
13 that they've already raised their aspirational
14 goal to 12 percent?

15 A I'm not aware of that.

16 MR. HEBERT: Object to the form of the
17 question.

18 A I'm not aware of that.

19 Q Is it your opinion that the setting of
20 those aspirational goals doesn't affect your
21 opinion as to factor 8?

22 A Certainly not. Maybe five years from

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1 now it might, but not now. And, again, you don't
2 wipe out these things just because you've -- after
3 its been exposed, you set an aspirational goal.

4 Q But you would agree with me that it
5 takes at least some time to correct the things
6 you've identified as failings or disparities? It
7 can't occur with the snap of a finger.

8 A It should have occurred way before now.

9 Q But in response to my question, you
10 would at least agree with me that these changes
11 don't occur in the snap of a finger?

12 A Nothing occurs in the snap of a finger,
13 but if the city was truly responsive to
14 minorities, these changes should have occurred a
15 long time ago. This isn't surprising.

16 Q I want to turn your attention to the
17 candidate George Furman.

18 A Okay.

19 Q Your Table R1 --

20 A Are we now on the rebuttal report?

21 Q On the rebuttal report, R1.

22 MR. HEBERT: I believe it's page 5,

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1 Jerry.

2 A It's page 4 of my copy. The chart is on
3 page 5, but same stuff.

4 Q Is it your opinion that George Furman
5 and his three candidacies are not probative for
6 purposes of a racially polarized voting analysis?

7 A I was following the lead here of
8 Dr. Spencer, who looked at that. But when I
9 responded to what your expert was arguing, I did
10 include Furman. And including Furman would not in
11 any significant way change anything from Table R1.

12 Q Table R1 does not include Asian and
13 Hispanic candidates, and I know that we've covered
14 this, but I want to confirm that they're not
15 included because it's your opinion that they
16 don't -- you cannot isolate Asian and Hispanic
17 amounts; is that correct?

18 MR. HEBERT: I'm going to object to the
19 form of the question.

20 A I'm not -- yeah, I'm not sure --

21 Q I'm sorry, I'm looking at the wrong
22 table.

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1 A Yeah.

2 Q Strike the question. Don't even bother
3 trying to answer.

4 A Okay.

5 Q Table R1 includes only black candidates
6 and white voters; is that correct?

7 A No.

8 Q Black candidates --

9 MR. HEBERT: Object to the form of the
10 question.

11 A No. That's incorrect.

12 Q What are you trying to show with Table
13 R1?

14 A Just who the candidates of choice of
15 blacks and whites were to show they're so
16 different.

17 Q You use the phrase, Burton was a token
18 candidate.

19 What do you mean by token candidate?

20 A I think he withdrew his name but
21 remained on the ballot.

22 Q Does that mean --

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1 A I think I say that right there.

2 Q Does that make him a token candidate?

3 A As close to a token candidate as you can
4 get. You can say -- you know, it's a little --
5 the terminology can't be exact here because, on
6 the one hand, he was a non-candidate; but on the
7 other hand, his name remained on the ballot, and
8 he got a very small vote.

9 That's why, for want of a better term, I
10 use the term token candidate.

11 Q Dr. Lichtman, why are Asians and
12 Hispanics not shown on this Table R1?

13 A You can't isolate the choices of Asian
14 and Hispanics. Plus, I was simply trying to show,
15 for the predominant minority group and all the
16 candidates of minorities for this period from that
17 same group, that the choices of black voters and
18 the choices of white voters are different.

19 And, remember, my purpose is -- I think
20 it's factor 2 -- to show polarization between
21 whites and minorities, not necessarily to parse
22 out different minorities.

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1 Q It's not important to your analysis to
2 understand the difference between each group and
3 whites?

4 A All I'm trying to establish is polarized
5 voting. And as I said, unfortunately you can't
6 isolate the votes of Hispanics and Asians. And
7 certainly I've shown extreme polarization between
8 the predominant minority group, the group that is
9 represented by all the candidates, and whites.

10 That's more than enough to satisfy
11 factor 2. If you want to get into the Gingles
12 factors, that's another matter. And I'm happy to
13 discuss them with you if you want to open that up.

14 Q I don't want to -- I want to ask a more
15 general question. And this is likely coming again
16 from a place of ignorance for me.

17 What do you identify as the differences
18 between a Gingles 2 and 3 analysis versus a factor
19 2 analysis on the Senate Factors?

20 A Right. Because in this case we're
21 dealing with coalition districts, a factor 2 of
22 Gingles 2 and 3 analysis, without making any legal

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1 opinion about what the judge may or may not decide
2 about that, has to address the coalition, look at
3 not just blacks but combined minorities to see if
4 the coalition has candidates of choice that are
5 different than whites.

6 And I think that's patently obvious here
7 as well as the differences between blacks and
8 whites. In addition, the Gingles analysis has to
9 be concerned with whether white-block voting
10 defeats candidates of choice of blacks.

11 You can have polarized voting with that.
12 That's an element of polarized voting. But you
13 can still have polarized voting without addressing
14 that question; although, I do address that
15 question because I think it is at least relevant.
16 But obviously, you would need to look at it
17 directly in doing a Gingles three-prong analysis.
18 But I think I did provide for you an updated Table
19 R3 and chart which gets into that issue.

20 Q That's what I'm looking at now. And
21 Table R3 is on page 9 of your rebuttal report.

22 A That's right.

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1 MR. HARRIS: I'm going to mark, for
2 purposes of today's deposition -- I think we're on
3 Exhibit 4.

4 I'm sorry, we're on Exhibit 5 now.

5 (Deposition Exhibit 5 was marked and was
6 attached to the transcript.)

7 Q Dr. Lichtman, many hours ago you showed
8 me this piece of paper.

9 Can you tell me the differences between
10 that Exhibit 5 that you provided at today's
11 deposition and Table R3 on page 9 of your --

12 A Just one very small change.

13 Q Okay.

14 A I added Furman in 2014 to the candidates
15 of choice of African Americans because, when I
16 looked at the Spencer response, I saw that he
17 analyzed 2014 as a two-vote, two-seat election at
18 large, which alerted me to the fact that Furman
19 was the second candidate of choice of African
20 Americans and, therefore, should count as a
21 candidate of choice.

22 And then the chart reflects that by

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1 saying, Among these candidates --

2 MR. HEBERT: If we can just stop for a
3 second, I believe that the chart is going to be a
4 new exhibit, so we should wait.

5 THE WITNESS: Oh, I'm sorry.

6 Q That's okay. Dr. Lichtman, we've spent
7 enough time together today you know exactly where
8 I'm going.

9 A Yes.

10 (Deposition Exhibit 6 was marked and was
11 attached to the transcript.)

12 Q Exhibit 6 has been marked as Chart R3.
13 I understand this is reflective of the change that
14 is contained in Exhibit 5.

15 A Right.

16 Q Can you just confirm that on the record?

17 A That's correct.

18 Q Thank you.

19 A And as I was saying, the change is only
20 that, instead of nine candidates of choice --
21 instead of eight candidates of choice of blacks
22 who lost, it's now nine. The three candidates of

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1 choice who won remain the same, and the one
2 candidate of choice who won, who wasn't part of
3 the special circumstances of 2018, remains at one.

4 Q Can I see Exhibit 5, please?

5 Did you do an analysis of Mr. Furman's
6 other two elections?

7 A Yes. There they are. Not candidates of
8 choice. They're on the next-to-last column.
9 Remember I said, when I dealt with Kidd's
10 material, I would include Furman to be consistent
11 with what he did.

12 Q Can you draw any conclusions from Furman
13 being the candidate of choice -- not being the
14 candidate of choice in two elections but being the
15 candidate of choice in one?

16 A I think it's probably because it was a
17 two-seat election in which you can have more than
18 one candidate of choice. But to be consistent, I
19 included him, and we can see that now nine out of
20 twelve African American candidates or
21 three-quarters, 75 percent, lost.

22 Q And that --

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1 A Even though they would have won with
2 black votes, all of them.

3 Q And that numerator denominator for
4 action that you've just given assumes coalition
5 between the black, Hispanic, and Asian voters in
6 Virginia Beach?

7 A It assumes nothing about coalition. All
8 it says is all of these candidates would have won
9 based on black votes. They all lost.

10 Q So --

11 A So in Virginia Beach, candidates of
12 choice for blacks overwhelmingly are being
13 defeated. And, in fact, it would be even more
14 overwhelming but for the special circumstances in
15 2018.

16 And the other African American who won
17 who was a candidate of choice for African
18 Americans, Ross Hammond, lost reelection; so it's
19 a pretty dismal record in Virginia Beach for
20 candidates of choice of African Americans.

21 Q Are there any conclusions to be drawn
22 from that table regarding the candidates of choice

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1 for Hispanics or Asians?

2 A As I said, you can't isolate Hispanics
3 and Asians, but if you looked at the candidates of
4 choice of minorities combined, you would see a
5 very similar pattern as well that combines support
6 as a candidate of choice of minorities does not
7 lead to victory either in Virginia Beach.

8 And I'd be happy to supplement this
9 table with one follow-up on your question that
10 looks at combined minorities.

11 Q Well, it's my understanding that
12 Dr. Spencer has actually done that using what's
13 called equivalency testing.

14 A No.

15 Q Am I wrong about that?

16 A Totally wrong.

17 Q Okay. Tell me why I'm totally wrong.

18 A The analysis I will supplement for you
19 that you asked about does the same thing here
20 except it looks at Dr. Spencer's estimates,
21 sometimes to do with the equivalence analysis, of
22 the votes by combined minorities for the

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1 candidates.

2 If you want to give me back
3 Dr. Spencer's tables, I can show you how that
4 works.

5 Q You're referencing his initial report at
6 this point? The combined minority support in the
7 initial report or the rebuttal report?

8 A It makes no difference. It would yield
9 the same results. And I'm not referencing
10 equivalency analysis.

11 Q I'm handing you what we were provided as
12 Dr. Spencer's report.

13 A Thank you.

14 Q That's his initial report. I'll let you
15 look through that, and if it's not there, then I
16 can -- I think I have a copy of the rebuttal.

17 A All right. Let me give you just an
18 example that just hit me as I turned it in.

19 Rose Hall, Cabinis (phonetic) is the
20 candidate of choice for blacks. He's also the
21 candidate of choice of minorities whether you look
22 at ER, which says he has a majority of all

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1 minorities combined or you look at EI -- although
2 it doesn't give a majority -- he's substantially
3 ahead of all the other candidates.

4 So he is both the candidate of choice of
5 black voters and the candidate of choice of all
6 the minorities combined -- blacks, Hispanics, and
7 Asians -- and would have won either based on black
8 votes alone or combined minority votes alone but
9 still lost the election.

10 So what I'm going to do for you is the
11 same thing here, instead of just look at the black
12 vote or the black candidates -- black voters alone
13 make as their candidate of choice, who the
14 combined minorities make as their candidate of
15 choice.

16 Q That will be great. Thank you.

17 A I'm happy to supplement that for you.
18 It'll take a few days. I'm not going to have it
19 for you tomorrow.

20 Q I understand a little busy.

21 A You understand how this is different now
22 from an equivalency analysis?

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1 Q How what is different than an
2 equivalency analysis? You're talking about the --

3 A My supplemental table which looks at
4 combined minorities rather than just black voters.
5 It's nothing to do with equivalency analysis.
6 It's a replication of this table changing black
7 candidate of choice of all minority voters who
8 would have won with all minority votes.

9 Q And would you expect to rely in that
10 supplemental table on ER or EI estimates of --

11 A I'm going to look at both, but I think
12 they're both going to give you the same candidates
13 of choice.

14 Q I would ask you, when you make that
15 decision, whether you average the two or use one
16 over the other, would you please indicate that on
17 the table somewhere?

18 A Happy to do it.

19 Q Thank you. That way we can avoid a
20 supplemental deposition.

21 A Of course. I try to be, you know, as
22 transparent as possible. I hate to say that in

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1 light of some politicians who said that.

2 Q These charts in Dr. Spencer's report --
3 actually, keep them in front of you. I'm going to
4 ask you a question about it --

5 A Sure.

6 Q -- you haven't been provided the source
7 data to create those charts, have you?

8 A No.

9 Q So you would still be relying on
10 Dr. Spencer's data to create a supplemental chart?

11 A Dr. Spencer's results.

12 Q Yes.

13 A And I think we all are. I don't think
14 Dr. Kidd either did his own independent analysis.

15 Q That's what I'm trying to get to. I'm
16 just trying to make sure you're not going to go
17 back and run your own EI or ER analysis. You're
18 still going to rely on the results of --

19 THE WITNESS: You're not going to ask me
20 to do that, are you, Mr. Hebert?

21 MR. HEBERT: I reserve the right to ask
22 you.

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1 THE WITNESS: I understand you reserve
2 your right but --

3 MR. HEBERT: But I don't have any
4 intention to do it at this moment.

5 THE WITNESS: And I don't have any
6 intention to do it at this moment.

7 Q All I'm trying to do is get an
8 understanding of, when I look at this supplemental
9 report, what I'm looking at.

10 A You're going to be looking at data --
11 excuse me, a compilation derived from
12 Dr. Spencer's reports, not from any independent
13 analysis that I'm going to do on my own.

14 Q Now, in Dr. Spencer's initial report, he
15 does rely on extreme case or homogeneous precinct
16 EI and ER. In his rebuttal report he does, then,
17 apply this equivalence testing method.

18 You're aware of that?

19 A Yes, of course.

20 Q Can you tell me what you understand
21 equivalence testing to be?

22 A Yeah. It's not an attempt to estimate

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1 the votes of any group. It's just a comparison,
2 given that there's a lot of error, as we know, in
3 any attempt to isolate Hispanic and Asian voting.
4 It's just testing the null hypothesis that blacks,
5 Hispanics, and Asians vote differently.

6 And if you can reject that null
7 hypothesis, that's an indication along with
8 looking at all minorities combined of a
9 commonality. It's not an estimate of how any
10 individual group votes.

11 Q Have you used equivalency testing in
12 your prior testimony?

13 A I've read about it, but I don't think
14 I've ever used it myself.

15 Q Do you know of any other expert who's
16 used it?

17 A I couldn't say, but there's certainly
18 plenty on it in the literature going back, I
19 think, to a -- at least an article in 1993 in the
20 Psychological Bulletin.

21 Q What did you -- when you say you've read
22 about it, can you tell me some of the sources of

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1 those --

2 A Yeah. I think I recall an article in
3 the Psychological Bulletin from 1993 on
4 equivalency testing. I think there's some
5 literature in the -- actually, biological
6 literature, I think. But it's nothing that I
7 focused on. I'm casually aware of it, and those
8 are a couple of sources that pop into my head.
9 But I can't give you a bibliography off the top of
10 my head.

11 Q Did you have an opportunity to review
12 the article that Dr. Spencer attached to his
13 rebuttal report regarding equivalency testing?

14 A I don't think I did. I may have seen it
15 at some time, but like I said, I've never used
16 equivalency analysis. I know what it is, I know
17 how it works, but I haven't focused on it.

18 Q Do you see it used commonly in Voting
19 Rights Act cases?

20 A Not that I can recall. But we have a
21 pretty special situation here.

22 Q Tell me what you mean by that, special

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1 situation.

2 A Because you can look at the coalition,
3 but you can't isolate separately a reliable
4 estimate of Hispanic and Asian votes. In other
5 cases -- I think I mentioned Florida and Texas
6 where you actually can separately analyze the
7 black and Hispanic vote.

8 Q This equivalency testing, it didn't
9 appear in Dr. Spencer's initial report as far as I
10 can tell.

11 Did you see in his initial report when
12 you read it?

13 A I think you're correct. I don't
14 recall -- again, it's much better to ask him these
15 questions, but I don't recall seeing it in his
16 initial report either. Doesn't mean it's not
17 buried in the footnote or something, but I don't
18 recall it.

19 Q The -- the sources for your
20 understanding of this equivalency testing, would
21 it be fair to say it was in -- more often in other
22 disciplines outside of political science?

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1 A I think that's correct. More in
2 psychology and biology. Which is not to say it's
3 not in political -- I haven't scrutinized the
4 sources. Again, you're much better off asking
5 Dr. Spencer about it.

6 Q What do you understand equivalency
7 testing to be doing as far as a methodological
8 approach to a Gingles prong 2 and 3 analysis?

9 MR. HEBERT: Object to the form of the
10 question.

11 A I think I already answered that. I said
12 equivalency testing is a mechanism for determining
13 whether you can reject the null hypothesis of
14 different behavior across the groups. How that is
15 then legally applied to prongs 2 and 3, that's,
16 you know, obviously for the judge to decide.

17 Q So -- and, again, I'll confess
18 ignorance -- you have indicated today in your
19 testimony that you cannot isolate Hispanics and
20 Asians using EI or ER.

21 A Reliably.

22 Q Reliably.

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1 A I mean, you can do whatever you want.

2 Q Sure. Would you say that equivalency
3 testing is a method to reliably isolate Hispanics
4 and Asians?

5 A Not to estimate their particular
6 percentage of voting for any individual candidate.
7 No, that's not what it does.

8 Q Is it your understanding that the
9 equivalency testing that Dr. Spencer has done
10 relies on the same data that he used to conduct
11 his EI and ER analysis?

12 A Again, you're better off asking him, but
13 I would imagine so. I'm not aware of a new data
14 set that he worked up for his response report.

15 MR. HARRIS: Mr. Hebert, do you recall
16 are we on Exhibit 7?

17 MR. HEBERT: Yes.

18 MR. HARRIS: Thank you. For the record,
19 I'm marking Exhibit 7.

20 (Deposition Exhibit 7 was marked and was
21 attached to the transcript.)

22 Q Dr. Lichtman, I'm showing you an email

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1 that was provided to our office by the Campaign
2 Legal Center on September 5, 2019.

3 The purpose of me including the email on
4 this exhibit is only to show you the source of a
5 table that's contained as page 2 of that exhibit.
6 Have you seen this table before?

7 A I'm not certain. You know, I
8 reviewed -- if it's in Spencer's report or
9 appendices I have. And it may well be because I
10 did see some indication of these large standard
11 areas for Hispanics and Asians. Whether it's
12 exactly this, I can't say. This is the first time
13 I've seen this. That's all I can tell you.
14 You're better off asking Dr. Spencer about that.

15 Q And just to clarify your testimony,
16 you're testifying this is the first time you've
17 seen the email, and you leave open the possibility
18 that you may have seen this chart at some point?

19 A Either the chart or some part of the
20 chart.

21 Q Okay. When a standard of error gets
22 larger, is it fair to say that you have less

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1 confidence in that point estimate?

2 A That's correct.

3 Q Dr. Spencer, let's change --

4 A No.

5 Q You're correct. Dr. Lichtman. I
6 apologize. I'm talking about Dr. Spencer to
7 Dr. Lichtman.

8 A There you go.

9 Q I want to change the person we're
10 talking about. I want to talking about Peter
11 Morrison.

12 A Okay.

13 Q You've included in your rebuttal report
14 a reference to cases where you've testified
15 previously with Peter Morrison as opposing counsel
16 expert.

17 A Correct.

18 Q Other than those two cases, can you
19 recall any other instances where you would say
20 that Peter Morrison had offered an unreliable
21 opinion?

22 A I think -- I can't cite chapter and

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1 verse, but I do recall in the Texas case -- I
2 think it was in the Texas case. I've seen so many
3 cases. There maybe others. There are other
4 examples of where indeed Dr. Morrison had provided
5 unreliable opinions, I think even cited
6 specifically to that factor by judges.

7 Q Were those cases in which you were the
8 expert on the other side?

9 A No. I think I was -- I've been an
10 expert in a couple of other cases with
11 Dr. Morrison. One was the Illinois congressional
12 redistricting case in 2011, and the other was --
13 I'm going way back to the famous Garza case on
14 county council -- county commission positions in
15 LA County.

16 And while I can't recall whether
17 Dr. Morrison was criticized specifically or not,
18 his analysis was not accepted in either case.

19 Q The cases you're referring to -- and
20 admittedly, I'm looking quickly --

21 A That's okay.

22 Q -- are they in your --

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1 A Yes. I can identity them for you if
2 you'd like me to.

3 Q It would help me just so I'd know --

4 A Exactly what the case is. One was 2011.
5 It's Committee for a Fair and Balanced Map, et al.
6 v. Illinois State Board of Elections. The other
7 was way back when. Yeah, top of page 5, Garza v.
8 County of Los Angeles.

9 Q What year was that?

10 A 1990.

11 Q You guys have been going back and forth
12 for a while.

13 A No kidding. I think he's even older
14 than I am, and that's hard.

15 Q Your initial report doesn't indicate you
16 intend to offer an opinion specifically related to
17 Gingles prong 1?

18 MR. HEBERT: Object. Asked and answered
19 but --

20 MR. HARRIS: Well, let me --

21 Q You agree with that premise, correct?

22 A I don't think I specifically reference

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1 that in my initial report, that's correct.

2 Q And your criticism of Morrison in this
3 case appears to me to relate to your rebuttal or
4 your response to his credibility as a witness.

5 Is that fair to say?

6 A It's not limited to that, but it does
7 include that.

8 Q That's a portion of it. And then the
9 other portions appears that you're opining on
10 the -- a fatal flaw in his prong 1 analysis, I'll
11 call it.

12 A In his analysis of the illustrative --
13 or plan.

14 Q Let's make sure we get on the same page
15 with vocabulary.

16 Do you understand what I mean when I say
17 prong 1 analysis?

18 A I assume you mean the illustrative plan.

19 Q Yes. We'll go with -- I'll use the
20 phrase illustrative plan.

21 A Yeah.

22 Q So have you had an opportunity to review

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1 Peter Morrison's response to Mr. Fairfax's report
2 regarding the illustrative district?

3 A Yes. I didn't get into the guts and
4 details. The only comment I had on it was it's
5 very close. Even taking at face value everything
6 Morrison did, we're right at the edge of
7 15 percent using data that's four years old in a
8 city that's becoming over time more and more
9 minority.

10 Q Can you identify a case where the
11 minority population trends were applied to that
12 illustrative analysis to cross over a 50 percent
13 threshold?

14 A I don't usually deal with prong 1 or the
15 illustrative plans, so I'm not the right person to
16 ask; but I do believe, going all the way back to
17 the Garza case, that population projections were
18 used. It wasn't for the 50 percent -- I forget
19 what threshold it was for; but population
20 projections, I believe, were used in the Garza
21 case.

22 Q For purposes of population forecasting,

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1 it's common for political scientists to rely on
2 ACS data?

3 A Absolutely.

4 Q But you would agree with me that the
5 2020 census data will be more reliable or more
6 accurate than the current ACS estimates from 2013
7 to 2017?

8 A It certainly will be more current and
9 perhaps more accurate, yeah. Depending if, you
10 know, they do the census right; and I have a lot
11 of doubts about that.

12 Q Well, I really want to ask a follow-up
13 question, but I'm not going to do that.

14 In your -- and forgive me, because it's
15 been several hours now --

16 A Yeah, we've been a long time.

17 Q -- did you tell me that you had reviewed
18 Fairfax's initial and rebuttal reports?

19 A Only very cursorily. I wanted to look
20 at one thing and one thing only that struck me.

21 Q What was that?

22 A The issue of how you deal with

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1 multiracial. And I noticed in Dr. Fairfax's
2 rebuttal that, when you treat multiracial
3 blacks -- blacks and whites as blacks -- there's
4 no question you're going with a 50 percent
5 threshold. And I faced that issue not for drawing
6 plans but for doing other analyses.

7 And so I had some reason to research
8 that in the past, and it's always been my
9 understanding under OMB, Office of Management and
10 Budget, and Justice Department guidelines, when
11 there is a complaint involving blacks, you treat
12 blacks and whites as black.

13 I think that's telling for the
14 illustrative plan.

15 Q You said blacks and whites as black, and
16 because it's going to end up on a transcript, I
17 want to make sure you mean mixed race, black and
18 white, as blacks.

19 A Yes. We're getting late, and I'm --

20 Q I understand.

21 A My precision is declining a bit; but,
22 yes, mixed race, those who identify as both black

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1 and white.

2 Q Understanding that you only did a
3 cursorily or basic review of Fairfax's reports,
4 did you see anywhere where he references a
5 reliance on population trends?

6 A I don't recall one way or the other.

7 MR. HARRIS: Can I ask for five minutes,
8 and I think we maybe -- even less. Two minutes.

9 MR. HEBERT: Yeah. Absolutely. Yep.

10 THE VIDEOGRAPHER: We are going off the
11 record. The time is 4:53 p.m.

12 (Off the record at 4:53 p.m.)

13 (On the record at 4:59 p.m.)

14 THE VIDEOGRAPHER: Back on the record at
15 4:59 p.m.

16 BY MR. HARRIS:

17 Q Dr. Lichtman, you had mentioned that you
18 had read the depositions of Dave Hansen and John
19 Moss during your testimony today.

20 Are there other depositions that you've
21 read?

22 A I don't believe -- I don't believe I

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1 have read any other depositions. Obviously, there
2 are going to be depositions I haven't seen yet
3 that I'll probably read for other experts, but I
4 haven't seen those to this point.

5 Q So at this point it is your expectation
6 that you will read further deposition testimony in
7 this case?

8 A Most likely. I mean, I won't swear to
9 it, but I think I'd be interested in what other
10 experts have to say.

11 Q During the course of your research for
12 the Senate Factors, did you ever do any
13 independent witness interviews?

14 A No.

15 Q During the course of your investigation
16 of the Senate Factors in Virginia Beach, did the
17 name Gary McCullum (phonetic) come up?

18 A It doesn't ring a bell. It doesn't mean
19 I haven't seen it. I've seen a lot of material,
20 but it doesn't strike me at the moment.

21 Q Can you confirm that the data you've
22 relied upon is the data that was created by

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1 Dr. Spencer?

2 A Well, no. I mean, I --

3 Q It's too broad of a question.

4 For purposes of ecological inference and
5 ecological regression, the data you've relied upon
6 is Dr. Spencer's data?

7 A For the most part, it's Dr. Spencer's
8 results. I didn't look at his data. And then I
9 did some, as you know, independent analyses of my
10 own based on the data supplied by Dr. Kidd on
11 turnout.

12 Q And if I understand the turnout, that
13 was an ecological inference and ecological
14 regression that you used for African American
15 turnout; is that correct?

16 A And white.

17 Q And white turnout?

18 A Yes.

19 Q But like the other circumstances in this
20 case, the Hispanic and Asian was not able to be
21 isolated in your ecological inference or
22 regression analysis?

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1 A I did not isolate -- that's right. I
2 did not isolate Hispanic and Asian.

3 Q You also mentioned the racially
4 insensitive comments of Dave Hansen during your
5 testimony today.

6 Did you discover any other racially
7 insensitive comments by sitting city council
8 members?

9 A Not that I can recall. I think I
10 probably would have cited them if they were pretty
11 clear. It doesn't mean there weren't any.

12 Q And I want to go back to something --
13 and I'm not intending to reopen a can of worms,
14 but we referenced this landslide victories
15 standard, and I think you used the phrase rule of
16 thumb as to the landslide victory.

17 A Yes.

18 Q In our discussions, I recall it being
19 related to racially polarized voting analysis in
20 which you would utilize this landslide victory
21 standard or rule of thumb.

22 A Only in a one-on-one election, not where

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1 there are multiple candidates, obviously.

2 Q Have you ever applied this landslide
3 victory standard to an analysis of a minority --
4 single minority groups cohesion amongst each
5 other?

6 A In a one-on-one election? I probably
7 have. Although, certainly not recently. I can't
8 recall. But I may have in the dim past.

9 Q So if I understand, then, there's an
10 application of the landslide victory standard or
11 rule of thumb in a racially polarized voting
12 analysis, but there also may be some application
13 to this landslide victory standard to cohesion
14 within a single minority group?

15 A In a one-on-one election. But that
16 doesn't mean it's necessarily -- you have to reach
17 that standard. It's just, if you reach that
18 standard, it's beyond dispute.

19 Q So then related specifically to cohesion
20 within a single minority group in a two-candidate
21 election, how would you measure cohesion of that
22 minority group?

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1 A You'd look at the percentage of the
2 minority group that aligned behind the minority
3 candidate.

4 Q And then what would you do next?

5 A As I said, if it's -- averages --
6 remember, cohesion is never measured in a single
7 election. It's measured as a pattern. And if it
8 was around 60 percent, then I'd say there's no
9 issue. If it's below 60 percent, there still
10 could well be cohesion, and you would look at
11 reasons why it might fall below 60 percent.

12 Q Is there any lower percentage where you
13 just say, no, this is not cohesive?

14 A I suppose, if over a pattern of
15 elections, you would find it's, you know, 51,
16 52 percent, you'd certainly question whether it
17 was cohesive. But, again, we're talking about --

18 Q Sure.

19 A -- elections where it's either below or
20 above. There's no plurality here.

21 Q And on those single elections, certainly
22 you would agree that, if there was a pattern of

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1 consistently below 50 percent, you couldn't allege
2 cohesion amongst that group?

3 A If there was a pattern, more often than
4 not, in one-on-one elections that -- let's just do
5 black and white to make it simple, that black
6 voters supported black candidates below
7 50 percent -- again, unless there was some very
8 special circumstances, that would certainly raise
9 a question about cohesion.

10 Q Dr. Lichtman, I don't have any other
11 questions for you today. I thank you for your
12 patience with me today. It's been a pleasure to
13 meet you, and I will await your predictions for
14 2020.

15 A You and a lot of other people.

16 MR. HEBERT: There was an issue, when
17 you went out to do your final tally, Dr. Lichtman
18 said that he remembered a case about population
19 projections that he wanted to give you an update
20 on.

21 MR. HARRIS: Okay.

22 MR. HEBERT: So you can ask the

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1 witness --

2 MR. HARRIS: I'll ask the follow-up
3 questions.

4 Q I had asked you a specific question
5 about population trends crossing the threshold
6 from below 50 percent to over 50 percent, and I
7 understand you have a follow-up.

8 A Yeah. Again, I'm not sure, because I
9 wasn't involved in drawing plans, whether it
10 related to the over or under; but it certainly
11 related to the composition of the districts. We
12 did discuss in the Ann Harding case, which I think
13 is one of the very ones on the top of the list I
14 gave you -- it's the Dallas County case -- we did
15 discuss the issue -- same thing here, that Dallas
16 County like the City of Virginia Beach has a
17 declining white population.

18 And these districts that were drawn
19 based on older data are not going to accurately
20 reflect the actual white population once the real
21 plan is drawn because it's going to be lower.

22 Q Do you know if the Court accepted that

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1 approach?

2 A I don't. I don't know. As I said, I
3 was not centrally involved in the plan.

4 Q Do you know how close they were to a
5 decennial census in that case?

6 A It was a recent case. I mean, I have
7 the date on --

8 Q I'm sorry, I should be looking at the --

9 A I think it's 2018, so it's pretty
10 recent. But we can reference it. What's the
11 date?

12 Q I'm looking at Exhibit 3, Ann Harding v.
13 County of Dallas. The date appears to be 2018.

14 A Yeah. That's the one.

15 Q You may not know this, but do you know
16 when that case was initially filed?

17 A I have no idea.

18 Q You had indicated that there was that
19 follow-up.

20 Is there any other follow-up you had?

21 A I'm done.

22 Q Great.

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1 A Thank you.

2 Q You too. Thank you, sir.

3 THE VIDEOGRAPHER: We are going off the
4 record. The time is 5:07 p.m.

5 (Off the record at 5:07 p.m.)
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CERTIFICATE OF COURT REPORTER - NOTARY PUBLIC

I, DARRELL LOWE, the officer before whom the foregoing deposition was taken, do hereby certify that said proceedings were electronically recorded by me; and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 30th day of September, 2019.



Darrell Lowe, Notary Public
for the District of Columbia

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CERTIFICATE OF TRANSCRIBER

I, ROBERT LEIFER, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.



ROBERT LEIFER

October 4, 2019

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July 15, 2019

United States District Court for the Eastern District of Virginia

Holloway v. City of Virginia Beach

Case No.: 2:18-cv-00069

**Expert Report of Dr. Allan J. Lichtman:
Totality of Circumstances Analysis**

**Distinguished Professor of History
American University
Washington, DC**



Allan J. Lichtman

EXHIBIT

Planet Depos, LLC

I. STATEMENT OF PURPOSE

I have been asked by Plaintiffs' counsel to examine the totality of circumstances applicable under Section 2 of the Voting Rights Act ("VRA") to the City of Virginia Beach. In doing so, I have been guided by the "Senate factors," which were detailed in a report accompanying the 1982 renewal of the VRA by the Senate Committee on the Judiciary. My analysis is relevant to the Court's consideration of the impact of these factors under Section 2 of the VRA.

The Senate factors are: (1) "the extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process;" (2) "the extent to which voting in the elections of the state or political subdivision is racially polarized;" (3) "the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;" (4) "if there is a candidate slating process, whether the members of the minority group have been denied access to that process;" (5) "the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;" (6) "whether political campaigns have been characterized by overt or subtle racial appeals;" and (7) "the extent to which members of the minority group have been elected to public office in the jurisdiction."¹

Additional factors include: (1) "whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group" and (2) "whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous." The Report emphasized that the list of factors is neither comprehensive nor exclusive and that "there is no requirement that any particular number of factors be proved, or that a majority of them point one way or the other."²

II. QUALIFICATIONS

This study draws on my experience in voting rights litigation and expertise in political history, political analysis, and historical and statistical methodology. I am Distinguished Professor of History at American University in Washington, D.C., where I have been employed for 45 years. Formerly, I served as Chair of the History Department and Associate Dean of the College of Arts and Sciences at American University. I received my BA in History from Brandeis University in 1967 and my Ph.D. in History from Harvard University in 1973, with a specialty in the mathematical analysis of historical data.

¹ *Thornburg v. Gingles*, 478 U.S. 30, 36-37 (1986) (quoting S. Rep. No. 97-417, at 28-29 (1982), *reprinted in* 1982 U.S.C.A.N. 177, 206-07) (internal quotation marks omitted).

² *Ibid.*

I am the author of numerous scholarly works on quantitative methodology in social science. This scholarship includes articles in such academic journals as *Political Methodology*, *Journal of Interdisciplinary History*, *International Journal of Forecasting*, and *Social Science History*. In addition, I coauthored *Ecological Inference* with Dr. Laura Langbein, a standard text on the analysis of social science data, including political information. I have published articles on the application of social science analysis to civil rights issues. This work includes articles in such journals as *Journal of Law and Politics*, *La Raza Law Journal*, *Evaluation Review*, *Journal of Legal Studies*, and *National Law Journal*. My scholarship also includes the use of quantitative and qualitative methods to conduct contemporary and historical studies, published in such academic journals as *Proceedings of the National Academy of Sciences*, *American Historical Review*, *International Journal of Forecasting*, *International Journal of Information Systems & Social Change*, and *Journal of Social History*.

Quantitative and historical analyses also ground my books, including, *Prejudice and the Old Politics: The Presidential Election of 1928*, *The Thirteen Keys to the Presidency* (co-authored with Ken DeCell), *The Keys to the White House*, *White Protestant Nation: The Rise of the American Conservative Movement*, and *FDR and the Jews* (co-authored with Richard Breitman). My most recent books are *The Case for Impeachment*, and *The Embattled Vote in America: From the Founding to the Present*. This latter book, published in September 2018 by Harvard University Press, examines the history and current status of voting rights in America.

My book, *White Protestant Nation*, was one of five finalists for the National Book Critics Circle Award for the best general nonfiction book published in America. My book, *FDR and the Jews*, was published under the Belknap Imprint of the Harvard University Press, reserved for works of special significance and lasting impact. This book was an editor's choice book of the New York Times in 2013, the winner of the most prestigious prize in American Jewish Studies, the National Jewish Book Award, and a finalist for Los Angeles Times Book Prize in history. My book, *The Case for Impeachment*, was an independent bookstore bestseller. In 2018, I was the winner of the Alfred Nelson Marquis Life Time Achievement Award for top 5% of persons included in Marquis WHO'S WHO.

I have worked as a consultant or expert witness for both plaintiffs and defendants in more than ninety voting and civil rights cases. My work includes more than a dozen cases for the United States Department of Justice and cases for many civil rights organizations. I have also worked as a consultant or expert witness numerous times for state and local jurisdictions. In the U. S. Supreme Court case, *League of United Latin Am. Citizens (LULAC) v. Perry*, 548 U.S. 399 (2006), the majority opinion written by Justice Kennedy authoritatively cited my statistical work. My work as an expert witness includes several cases in the state of Virginia.

I am being compensated for my work in this matter at the rate of \$350 per hour. I have attached an updated CV and a table of cases in which I have provided written or oral testimony.

III. EVIDENCE, METHODOLOGY, AND SUMMARY OF OPINIONS

I understand that the parties to this lawsuit have had a discovery dispute and that the City of Virginia Beach has not responded to Plaintiffs' totality of circumstances discovery requests. As a result, I reserve the right to supplement this report with additional information as the discovery process moves forward.

My analysis draws upon sources standard in historical and social scientific analysis. These include scholarly books, articles, and reports; newspaper and other journalistic articles; demographic and socio-economic information; election returns; voter registration and turnout data; court opinions, briefs, and reports; government and organizational documents; and scientific surveys and studies.

Through my analysis of this material I have found that nearly all of the Senate Factors are present in Virginia Beach. Minorities are burdened by a long history of racial discrimination in Virginia, which continues into recent times in both the state and the city. Voting in Virginia Beach is polarized along racial lines between whites and minorities. Under Virginia Beach's at-large election system, candidates for city council must compete across a large city of some 250 square miles and more than 450,000 persons. Virginia Beach's at-large election system includes 7 designated positions or numbered posts that prevent minorities from concentrating their votes on one or a small number of candidates. The lingering effects of discrimination in Virginia and the City of Virginia Beach are reflected in significant present-day disparities with regard to income, unemployment, poverty, education, housing, and the availability of vehicles. These socio-economic disparities bear directly on the ability of minorities to elect candidates of their choice and participate fully and effectively in the political process. Political campaigns in Virginia and Virginia Beach have been marked by racial appeals, and both Virginia and Virginia Beach have a weak record of electing minorities to public office. In significant ways, Virginia Beach has not been responsive to the particularized needs of minorities, and the justification for the current at-large election system with designated places is tenuous when compared to practices in other large Virginia cities.

IV. SENATE FACTORS

Factor 1: The extent of any history of official discrimination in the state or political subdivision that touched the right of members of the minority group to register, vote, or otherwise to participate in the democratic process.

The state of Virginia has a long and well-recognized history of racial discrimination, which has primarily been directed against African Americans—Virginia's largest minority group—but has also affected all people of color. Indeed, such discrimination is persistent and ongoing even in the contemporary era, and directly affects the opportunity of African Americans and other minority residents to participate fully in the political process and elect candidates of their choice in Virginia. Decisions made by the state impact voters across Virginia, including the City of Virginia Beach. Consequently, Virginia Beach has its own legacy of racial discrimination that persists to the present day, although the scope of its authority is naturally much more limited than that of the

state.

The following analysis briefly explores Virginia's history of racial discrimination and its modern incarnation. This analysis includes not only direct restrictions on voting and registration, but also other forms of discrimination that burdened racial minorities, contributed to racial isolation, and limited opportunities for advancing their socio-economic status. In turn, such discrimination has and does restrict minorities' ability to participate fully and effectively in the political process in Virginia.³

State of Virginia

During the Reconstruction period that followed the era of slavery and the end of the Civil War, African Americans in Virginia participated robustly in the politics of the Commonwealth as voters and office-holders. By the 1880s, however, the white supremacists who dominated the Democratic Party began to adopt measures aimed at eliminating black voting and office-holding in Virginia. In 1884, the state passed the Walton Act—a secret ballot law—which aimed at disenfranchising illiterate individuals, most of whom were black.⁴ The law proscribed ballots from including names or symbols for parties, and limited the time for voters to navigate through the names of all candidates.

Then, in Virginia's Constitutional Convention of 1901-1902, white supremacists effectively snuffed out black voting and office-holding through literacy and poll tax requirements. Convention delegate Carter Glass, who later became a U.S. Senator from Virginia said, "Discrimination! Why, that is precisely what we propose; that, exactly is what this Convention was elected for—to discriminate to the very extremity of permissible action under the limitations of the Federal Constitution, with a view to the elimination of every negro voter who can be gotten rid of, legally, without Discrimination!" He explained that the Convention would circumvent the Fifteenth

³ For more detailed historical analysis see, Thomas R. Morris and Neal Bradley, "Virginia," in Chandler Davidson and Bernard Grofman, eds., *Quiet Revolution in the South* (Princeton University Press, 1994), pp. 217-291 and United States District Court for the Eastern District Of Virginia, *Lee, et. al. v. Virginia State Board of Elections, et. al.*, Case No. 3:15-CV-357, "Expert Report of Dr. John Douglas Smith," 14 December 2015. On the relationship between socio-economic standing and political opportunities see, for example: Steven J. Rosenstone and John Mark Hansen, *Mobilization, Participation and Democracy in America*, (Macmillan, 1993); Sidney Verba, Kay Lehman Schlozman, and Henry E. Brady, *Voice and Equality: Civic Volunteerism in American Politics* (Harvard, 1995); D. Sunshine Hillygus, *The Missing Link: Exploring the Relationship Between Higher Education and Political Engagement*, 27 *Political Behavior* 25-47 (2005); Michael Parkin and Frances Zlotnick, *English Proficiency and Latino Participation in U.S. Elections*, 39 *Politics and Policy* 515-37 (2011), Pew Research Center, *The Party of Non-Voters*, October 31, 2014, <http://www.people-press.org/2014/10/31/the-party-of-nonvoters-2/>; Jan E. Leighley and Jonathan Nagler, *Who Votes Now? Demographics, Issues, Inequality and Turnout in the United States*, (Princeton University Press, 2014); Randall Akee, et al., "Family Income and the Intergenerational Transmission of Voting Behavior: Evidence from an Income Intervention" National Bureau of Economic Research, Working Paper, No. 24770, June 2018, <https://www.nber.org/papers/w24770>; Joseph M. Colomer, "Benefits and Costs of Voting," *Electoral Studies* 10 (1991), 313-325; Lee Sigelman and William D. Berry, "Costs and the Calculus of Voting," *Political Behavior* 4 (1982), 419-428; Martin Gilens and Benjamin I. Page, "Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens," *Perspectives on Politics*, 12 (2004), pp. 564-581.

⁴ J. Morgan Kousser, *The Shaping of Southern Politics: Suffrage Restrictions and the Establishment of the One-Party South, 1880-1910* (Yale University Press, 1974), p. 173.

Amendment by adopting measures that had the effect of disenfranchising African Americans without specifically invoking race: “As has been said, we have accomplished our purpose strictly within the limitations of the Federal Constitution by legislating against the characteristics of the black race, not against the ‘race, color or previous condition’ of the people themselves.” By 1905, only 10,500 of 147,000 eligible African Americans in Virginia (7 percent) remained on the registration lists.⁵

By the early twentieth century, Virginia had also established the multi-faceted system of racial discrimination known as Jim Crow. This included legal segregation in schools, transportation, and public facilities, and de facto segregation in housing and public accommodations. Participation in the legal system—including service as judges, prosecutors, police officers and jurors—was largely limited to whites. In 1924, Virginia enacted an involuntary sterilization law which was upheld by the U.S. Supreme Court. As a result, “[f]or nearly fifty years, the Commonwealth of Virginia sterilized thousands of persons, white and black, who were deemed feebleminded, insane, or prone to criminal behavior.”⁶

In 1924, as part of the eugenics movement that had led to the involuntary sterilization law, Virginia enacted legislation that became known as the Racial Integrity Act, which one historian called “the most draconian miscegenation law in American history.” This legislation, which had no parallel in any other state, criminalized “willfully lying about one’s color,” prohibited whites from marrying nonwhites (subject to a “Pocahontas Exception”), and defined a “a white person as one ‘who has no trace whatsoever of any blood other than Caucasian.’” In 1930, Virginia revised the Racial Integrity Act to define as black anyone with “one-drop” of alleged black blood, with a single exception to permit “persons with at least one-fourth Indian blood and less than one-sixteenth black blood to remain classified as Indians, but only if they lived on a recognized reservation.” These racial integrity laws applied not just to African Americans but to all non-caucasians in Virginia.⁷

In 1926, the General Assembly enacted the Public Assembly Act, designed to keep blacks and whites separate in public places. The law required “the separation of white and colored persons at public halls, theaters, opera houses, motion picture shows and places of public entertainment and public assemblages.” According to historian of race relations and the South Richard B. Sherman, Reverend James Franklin Love of the Southern Baptist Foreign Mission futilely opposed the bill because it would discriminate against Chinese and Japanese students attending the University of Richmond. Sherman explained that the Act “was unique. Despite the proliferation of Jim Crow laws since the turn of the century, no other state passed such a law. It was obviously a product of the hysteria created by the campaign for racial integrity.”⁸

The Supreme Court’s 1954 *Brown v. Board of Education* decision led Virginia to join the white South’s “massive resistance” to the integration of its public schools. Every member of

⁵ Ibid., 178-181; Smith, “Expert Report,” pp. 9-11; Davidson and Grofman, “Virginia,” pp. 273-274.

⁶ Smith, “Expert Report,” pp. 22-23.

⁷ Richard B. Sherman, “‘The Last Stand’: The Fight for Racial Integrity in Virginia in the 1920s,” *Journal of Southern History*, 54 (1988); Smith, Expert Report,” pp. 25-28; Leslie Bow, *Partly Colored: Asian Americans and Racial Anomaly in the Segregated South* (New York: NYU Press, 2010), p. 50.

⁸ “Separation of the Races 1926,” *Encyclopedia Virginia*, https://www.encyclopediavirginia.org/Separation_of_Races_1926; Ibid., Sherman, “‘The Last Stand,’” pp. 83-85.

Virginia's congressional delegation signed the "Declaration of Constitutional Principles"—also known as the "Southern Manifesto"—which pledged resistance to school desegregation. As explained by historian James H. Hershman, Jr., school segregation in Virginia advantaged whites and severely disadvantaged African Americans and other people of color: "The discrimination was egregious—school facilities, educational materials, teacher salaries, and transportation in the separate black system were markedly inferior to those provided white students. African American children under this regime were denied many of the opportunities for economic advancement provided by public school education, and such conditions distorted the educational development of all students."⁹

In 1956, a special session of the Virginia General Assembly put the stamp of law on so-called "massive resistance." The legislature put pupil placement authority in the hands of the state to prevent the assignment of black pupils to white schools. It authorized the governor to close schools that courts had ordered to be integrated -- which was quickly struck down as unconstitutional -- and required the NAACP to disclose its membership. In 1958, after a federal court issued a desegregation order for the city of Norfolk, Governor Almond closed all public schools, which affected nearly 13,000 students. In 1959, the state reopened the schools to permit limited desegregation. However, Prince Edward County closed its public schools in defiance of an integration order that same year. With the assistance of grants from the states, whites set up a segregated private school in Prince Edward County, but no alternatives were available to black students. Other school districts sought to maintain segregation through so-called "freedom of choice" plans that enabled white parents to send their children to all-white schools. Public schools did not reopen in Prince Edward County until 1964, and the pace of integration in Virginia did not pick up until the late 1960s.¹⁰

Federal intervention in the 1960s struck a blow against Jim Crow and expanded opportunities for non-whites in Virginia to participate in the political process. In 1964, Congress enacted the Civil Rights Act that banned racial discrimination in both public facilities and public accommodations. It prohibited employment discrimination based on race or sex and racial discrimination in programs and activities receiving federal financial assistance, and applied to institutions such as federally-funded schools and colleges. In 1967, in *Loving v. Virginia*, the U.S. Supreme Court struck down the prohibitions on interracial marriage in force in Virginia and fifteen other states. Miscegenation laws like one struck down in *Loving* affected all minorities, not just African Americans: for example, a dozen years before *Loving*, the Virginia Supreme Court rejected a challenge to its ban on interracial marriage brought by an Asian man married to a white woman. The U.S. Supreme Court declined to hear plaintiffs' appeal. In 1962, the state Supreme Court also ruled that a bi-racial Asian and white couple who had married in New Jersey and moved to Virginia did not have a legal marriage in Virginia and could not pursue a divorce in the state.¹¹

⁹ James M. Hershman, Jr., "Massive Resistance," Encyclopedia Virginia, https://www.encyclopediavirginia.org/massive_resistance; James W Ely, *The Crisis Of Conservative Virginia: The Byrd Organization And The Politics Of Massive Resistance* (University of Tennessee Press, 1976); Alexander Leidholdt, *Standing Before the Shouting Mob: Lenoir Chambers and Virginia's Massive Resistance to Public-School Integration* (University of Alabama Press, 1997).

¹⁰ Ibid.

¹¹ *Loving v. Virginia*, 388 U.S. 1 (1967); *Ham Say Naim v. Ruby Elaine Naim*, 197 Va. 80 [87 S.E. 2d 749] (1955); Peggy Pascoe, *What Comes Naturally: Miscegenation Law and the Making of Race in America* (New York: Oxford University Press, 2009), pp. 226-231; *Calma v. Calma*, 128 S.E.2d 440 (Va. 1962).

In January 1964, the Twenty-Fourth Amendment abolished the use of the poll tax in federal elections. At the time, Virginia was one of only five states that still enforced the poll tax. The state of Virginia, however, sought to blunt the effect of the poll tax's elimination by passing other legislation aimed at disenfranchising voters. In the fall of 1963, in anticipation of the ratification of the Twenty-Fourth Amendment, the Virginia General Assembly passed a law requiring potential voters to file a "certificate of residence" six months prior to a federal election in order to prove continuing residence in the state. In May of 1964, a federal district court struck down the law as discriminatory. In 1966, the U.S. Supreme Court struck down Virginia's use of the poll tax in state elections in *Harper v. Virginia Board of Elections* and ruled that the use of the poll tax in any elections—not just federal elections—violated the Equal Protection Clause of the Fourteenth Amendment. In his majority opinion, Chief Justice Earl Warren wrote that "the Virginia poll tax was born of a desire to disenfranchise the Negro."¹²

In 1965, Congress enacted the landmark Voting Rights Act. With one exception, the entire Virginia congressional delegation opposed passage of the Act. Only two members of Virginia's twelve-member congressional delegation subsequently supported extensions of the Voting Rights Act in 1970, 1975, and 1982.¹³

The VRA, which contains nearly 5,500 words and nineteen sections, would be enforced through both direct administrative action by the U.S. Department of Justice and lawsuits that could be filed by both the Justice Department and private parties. Among other provisions, the VRA made it a federal crime for any person or conspiracy of people, whether acting under color of law or not, to intimidate, threaten, or coerce anyone for attempting to vote. It declared that individuals could not be denied the right to vote for a lack of English proficiency if they had completed at least a sixth-grade education. It also authorized courts nationwide to suspend the use of any discriminatory test or device used by a jurisdiction as a prerequisite for voting and to appoint federal election examiners to register voters and monitor elections.¹⁴

Section 2 of the VRA stipulated that "no voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color." Beyond prohibiting practices that deny the vote to minorities, Congress designed Section 2 to ensure that minorities could make their vote count by having a reasonable opportunity to participate fully and effectively in the political process and elect candidates of their choice. Sections 4 and 5 singled out for special treatment certain "covered" jurisdictions that employed discriminatory tests or devices and had low rates of voter registration or turnout. These covered jurisdictions were prohibited from enacting any laws affecting voting—including redistricting schemes—without first submitting them

¹² Steven F. Lawson, *Black Ballots: Voting Rights in the South, 1944–1969*. (Columbia University Press, 1976); Frederick D. Ogden, *The Poll Tax in the South* (University of Alabama Press, 1958), Davidson and Grofman, "Virginia," p. 276.

¹³ Smith, "Expert Report," p. 45.

¹⁴ Text of Voting Rights Act (1965), <https://www.ourdocuments.gov/doc.php?flash=false&doc=100&page=transcript>

to the U.S. Attorney General or the U.S. District Court for D.C. for “preclearance” so as to ensure they did not discriminate against minority voters. Virginia was one of only six southern states covered in their entirety under preclearance from the Act’s inception in 1965 until 2013, when the U.S. Supreme Court’s holding in *Shelby County v. Holder* invalidated the coverage formula in Section 4 of the Act.¹⁵

In the decades following the VRA’s passage, the Department of Justice and federal courts objected to multiple voting-related laws proposed by Virginia’s General Assembly.

The Justice Department interposed objections during Section 5 preclearance review to Virginia’s redistricting plans for both chambers of the General Assembly following the Census of 1970. The State Senate responded by creating single-member districts, with one exception in Norfolk. There, the State House was able to retain multi-member districts after the U.S. Supreme Court in *Whitcomb v. Chambers* declined to rule that such districts violated the Fourteenth Amendment.¹⁶

In 1973, the Virginia General Assembly passed a resolution for “bailing” the state out of coverage under Section 5 of the Voting Rights Act. The Attorney General then filed a lawsuit under the “bail out” provision of the Act arguing that Virginia had rectified the low registration and turnout of African Americans that justified its original coverage under Section 4. A federal district court rejected the bail out in part because of “the causal connection between the maintenance of inferior schools for blacks and their lesser ability to pass Virginia’s literacy requirement prior to 1965.”¹⁷

At the time of the 1980s restricting, Virginia’s “record of four blacks in the hundred-member lower house and one black in the forty-member upper gave it the lowest level of black representation in the South.” Unsurprisingly, the state legislative redistricting process following the 1980s census was protracted and contentious: It encompassed “some fourteen legislative sessions, six redistricting plans, a ruling of unconstitutional population disparities by a three-judge federal panel, a gubernatorial veto, and Justice Department Section 5 objections to plans for both houses.”¹⁸ Under pressure, the legislature allowed civil rights groups to participate in the map drawing process. As a result of the redistricting, the House of Delegates transitioned to single-member districts, 9 of 100 of which (9 percent) had black majorities. In the elections following redistricting, black representation in the state senate moved from one to three members (7.5 percent) in a state that was 19 percent black.¹⁹

In 1991, the Department of Justice interposed another Section 5 objection to Virginia’s redistricting plan for the State House of Delegates. The Department’s objection letter stated:

¹⁵ Ibid. U.S. Department of Justice, “Jurisdictions Previously Covered By Section 5,” <https://www.justice.gov/crt/jurisdictions-previously-covered-section-5>.

¹⁶ Davidson and Grofman, “Virginia,” p. 281.

¹⁷ *Commonwealth of Virginia v. United States*, 386 F. Supp. 1319 (D.D.C. 1975), at 1324.

¹⁸ Davidson and Grofman, “Virginia,” p. 281.

¹⁹ Quotes and data on Ibid., pp. 281-282.

“We have examined the 1991 House redistricting choices in light of the element of racially polarized voting that appears to characterize at least some elections in the state. For the most part, our analysis shows that the Virginia House redistricting plan meets Section 5 preclearance requirements. In one area, however, the proposed configuration of district boundary lines appears to have been drawn in such a way as to minimize black voting strength. Specifically, we refer to the considerable concentration of black population in Charles City County where approximately 4000 blacks are submerged in a majority white district. We are aware that the Legislature rejected available alternatives that would have recognized this concentration of voters by drawing them into a district with black voters in the Richmond area that likely would result in an additional district which provides black voters an equal opportunity to participate in the political process and to elect candidates of their choice to office. While we have noted the state's explanation that the submitted districting in this area was designed to protect certain incumbents, and even though incumbency protection is not in and of itself an inappropriate consideration, it may not be accomplished at the expense of minority voting potential.”²⁰

Discrimination against minorities in Virginia has continued well into the 21st century. In 2014, a three-judge federal court for the Eastern District of Virginia held in *Page v. Virginia State Board of Elections* that Virginia's post-2010 congressional redistricting was unconstitutional because it needlessly packed African American voters into a single district, diminishing their political influence elsewhere in the state. The Court found “that plaintiffs have shown race predominated. We find that the Third Congressional District cannot survive review under the exacting standard of district scrutiny. While compliance with Section 5 was a compelling state interest when the General Assembly acted, their districting plan was not narrowly tailored to further that interest. Accordingly, we are compelled to hold that the challenged Third Congressional District violates the Equal Protection Clause of the Fourteenth Amendment.” This finding was reaffirmed by the district court panel a second time after the Supreme Court remanded the matter for further consideration following its decision in *Alabama Legislative Black Caucus v. Alabama*.²¹

In June 2018, after a remand from the U.S. Supreme Court, a three-judge federal district court held in *Bethune-Hill v. Virginia State Bd. of Elections* that Virginia had similarly engaged in an unlawfully racial gerrymander of state legislative districts. The court found that the state legislature had unlawfully packed African Americans into 11 voting districts drawn after the 2010 census. All of these districts had at least a 55 percent population of black residents of voting age, which was higher than the percentage necessary to provide African American voters with a realistic opportunity to elect candidates of their choice. This packing diminished the voting power of African Americans across other districts, and the Court ruled that “overwhelming evidence in this case shows that, contrary to this constitutional mandate, the state has sorted voters into districts based on the color of their skin. The legislature made no effort to determine whether the mechanical

²⁰ John R. Dunne, Assistant Attorney General to K. Marshall Cook, Deputy Attorney General, Virginia, 16 July 1991, <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/VA-1230.pdf>.

²¹ *Page v. Virginia State Board of Elections*, 58 F. Supp. 3d 533 (E.D. Va. 2014); *Page v. Virginia State Board of Elections*, No. 3:13CV678, 2015 WL 3604029, at *6 (E.D. Va. June 5, 2015).

55% racial threshold was required to comply with the VRA, and instead arbitrarily applied the same racial mandate to 12 vastly dissimilar districts. This predominant use of race and disregard of narrow tailoring principles plainly are at odds with the guarantees of the Equal Protection Clause.”²²

After Republicans in the General Assembly could not develop a plan that gained bipartisan support, the District Court appointed a special master to redraw the unconstitutional districts. In June 2019, the U.S. Supreme Court rejected on procedural grounds a challenge to this ruling by the Republican majority in the state House of Representatives.²³

Voting is not the only domain in which Virginia’s minorities experience discrimination. In 2013, the Equal Rights Center reported results of a “testing-based study of Latinos and whites seeking rental housing across the Commonwealth of Virginia.” The Center found that Latinos “experienced at least one form of adverse treatment as compared to their white counterparts in 55 percent of inquiries.” The study included the City of Virginia Beach along with “the City of Fairfax, the City of Richmond, Henrico County, Loudoun County, Prince William County and Manassas, Roanoke County, Northwest Virginia (covering Augusta, Culpeper, Frederick, and Rockingham Counties).” The Center found that “in 55 percent of tests, the Latino tester received adverse, differential treatment as compared to the white tester, in at least one respect, including:

- Being quoted higher rents or higher fees for the same rental unit than white testers;
- Not being offered incentives or “specials” that were offered to white testers seeking the same housing;
- Being offered fewer available units or later availability dates than those offered to white testers; and
- Being told about additional application requirements, such as credit checks or providing a social security card, which were not told to white testers.”²⁴

The Center’s Executive Director John Kohl concluded that “while we are beginning to see movement toward a consensus around immigration reform, hostility towards immigrants at the local level, unfortunately, continues to result in unfair treatment for many—irrespective of their immigrant status.” The Center recommended that Virginia “legislators should ensure that all immigration-related bills encourage fair housing and comply with federal civil rights laws.”²⁵

²² *Bethune-Hill v. Virginia State Bd. of Elections*, 580 U.S. ____ (2017); *Bethune-Hill v. Virginia State Board of Elections*, 326 F. Supp. 3d 128 (E.D. Va. 2018), at 92.

²³ Gregory S. Schneider, “Federal Court Releases Plan for Possible Redistricting in Virginia, *Washington Post*, 7 December 2018, https://www.washingtonpost.com/local/virginia-politics/federal-court-releases-plans-for-possible-redistricting-in-virginia-refuses-to-delay-process/2018/12/07/a1a58be6-f728-11e8-8d64-4e79db33382f_story.html?utm_term=.d20e4ce179f7; Adam Liptak, “Justices Dismiss Appeal in Virginia Racial Gerrymandering Case,” *New York Times*, 19 June 2019, <https://www.nytimes.com/2019/06/17/us/politics/virginia-racial-gerrymandering-supreme-court.html>; *Virginia House of Delegates v. Bethune-Hill*, No. 18–281. Argued March 18, 2019—Decided June 17, 2019.

²⁴ Equal Rights Center, “Investigation Finds Adverse Treatment Of Latinos In 55 Percent Of Rental Housing Inquiries,” 30 April 2013, <https://equalrightscenter.org/press-releases/investigation-finds-adverse-treatment-of-latinos-in-55-of-rental-housing-inquiries/>.

²⁵ *Ibid.*

However, the Virginia General Assembly has only inflamed tensions around immigration. In 2019, it passed the anti-sanctuary Senate Bill that provides that “no locality shall adopt any ordinance, procedure, or policy intended to restrict the enforcement of federal immigration laws.” All but one of the state legislators representing at least part of Virginia Beach voted for the Sanctuary Cities Bill. Also in 2019, the General Assembly passed House Bill 2270 that “requires that the sheriff, jail superintendent, or other official in charge of a local correctional facility or a regional jail in which an alien is incarcerated shall notify U.S. Immigration and Customs Enforcement of the release or discharge of the alien forthwith as soon as the release date is known.” Democratic Governor Ralph Northam vetoed both bills, stating that “the safety of our communities requires that all people, whether they are documented or not, feel comfortable, supported and protected by our public safety agencies.” He had vetoed similar “sanctuary legislation” the year prior as well.²⁶

Virginia Beach

Virginia Beach is the largest city in Virginia, with a population of more than 450,000 persons according to the latest U.S. Census estimates. As indicated in Table 1, based on U.S. Census data for 2013-2017, Virginia Beach is slightly less than two-thirds non-Hispanic white and slightly more than one-third combined minority, with the non-Hispanic white percentage largest for citizen voting age and smallest for total population. African Americans comprise by far the largest minority group with just under 20 percent, following by Hispanics and Asians with approximately equal populations that range from 6.1 percent to 7.8 percent, depending on the measure examined. Other minorities comprise a minimal percentage of Virginia Beach’s population. In terms of absolute numbers, Virginia Beach has the largest African American population of any Virginia city, with nearly 100,000 African American residents.

As indicted in Table 2 and Chart 1, the minority population of Virginia Beach has been growing in recent years relative to the non-Hispanic white population. From the Census of 2000 through the 2013-2017 ACS estimates, the minority population in Virginia Beach has increased by 22.2 percent for all persons, 25.4 percent for voting-age persons, and 25.1 percent for citizen voting-age persons.

Like the Commonwealth of Virginia, the City of Virginia Beach has a history of discrimination which extends from its founding in the 1960s through recent times. In 1966, the city adopted at-large elections for electing 11 city council members, which meant that all candidates had to compete for positions in a large city of 249 square miles. In addition, it established that 7 members would be selected from designated or numbered posts, where they would run from residential districts with a single seat at stake, but all voters in the city would participate. The Senate Report lists the use of large places for elections as among the factors in the totality of

²⁶ Virginia’s Legislative Information System, 2019 Session, “SB 1156,” <http://lis.virginia.gov/cgi-bin/legp604.exe?191+sum+SB1156> and “HB 2270,” <https://lis.virginia.gov/cgi-bin/legp604.exe?191+sum+HB2270>; Mel Leonor, “Northam Vetoes ‘Sanctuary Cities’ Bill,” *Richmond Times-Dispatch*, 19 March 2019, https://www.richmond.com/news/virginia/government-politics/northam-vetoes-sanctuary-cities-bill/article_a0594c7e-b87f-5e4e-9eb8-feb32abdbfc7.html.

circumstances (Factor 3) that can impede minority voting opportunities. The report also cites the designation or numbering of posts in Factor 3, because such a labeling prevents “single-shot voting” —the practice of concentrating minority votes on a candidate of choice or a limited number of candidates of choice when multiple candidates are up for election in a multi-seat contest. According to a 2006 scholarly analysis of post-1982 decisions under Section 2 of the VRA, 26 courts that found a violation of Section 2 cited “anti-single shot provisions, such as staggered terms and/or numbered-place requirements” as factors informing their findings. Thirteen courts cited “unusually large districts.”²⁷ The City of Virginia Beach has all both, plus an at-large scheme.

In the 1990s, the City of Virginia Beach considered switching from its at-large system to a district system for electing members of the city council. During this period, other jurisdictions in Virginia were converting from at-large elections to districts—and consequently increasing minority representation on their governing bodies—in order to appease the Justice Department and respond to voting rights litigation.²⁸ However, the City of Virginia Beach ultimately decided not to adopt district elections, and the at-large election system remains in operation to this day.

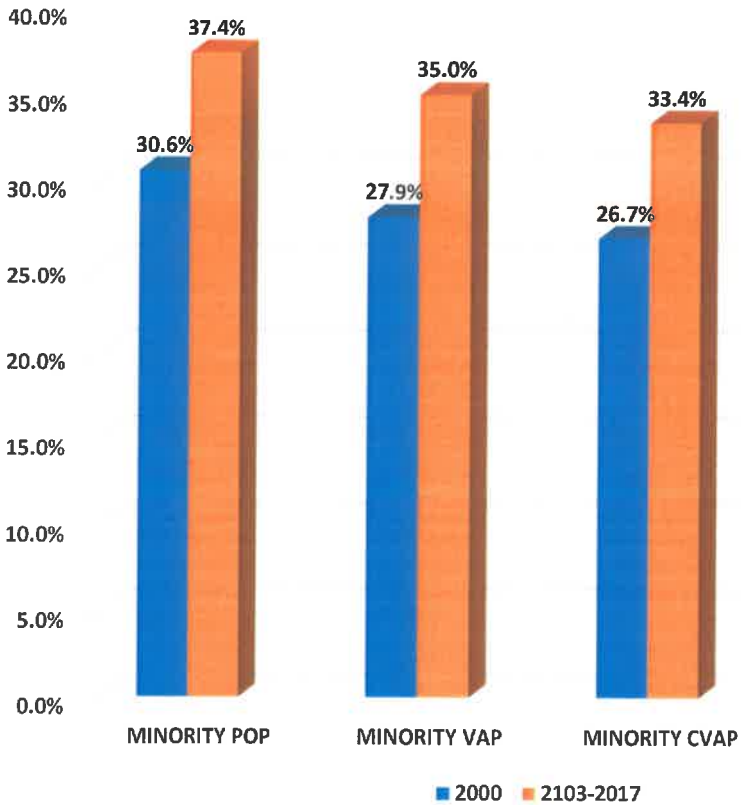
²⁷ Ellen D. Katz, et al., “Documenting Discrimination in Voting: Judicial Findings Under Section 2 of the Voting Rights Act Since 1982” *University of Michigan Journal of Law Reform*, 39 (2006), p. 698.

²⁸ Davidson and Grofman, “Virginia,” pp. 283-286; Deidre Fernandes, “Candidates: Wards Would Help Blacks Get Elected,” *Virginian-Pilot*, 12 October 2008, p. B1; John Warren, “Black Leaders Discuss a Shift in Voting System,” *Virginian-Pilot*, 12 April 2008, p. A1.

TABLE 1 POPULATION, VOTING AGE POPULATION, CITIZEN VOTING AGE PERCENTAGES BY RACE, VIRGINIA BEACH, US CENSUS, AMERICAN COMMUNITY SURVEY, 2013-2017							
POPULATION MEASURE	NON-HISP. WHITE	NON-HISP. BLACK	HISPANIC	NON-HISP. ASIAN	OTHER	BLACK, HISP. ASIAN	ALL MINORITY
TOTAL	62.6%	20.0%	7.8%	7.9%	1.7%	35.7%	37.4%
VOTING AGE	65.0%	18.7%	7.0%	7.8%	1.5%	33.5%	35.0%
CITIZEN VOTING AGE	66.6%	19.3%	6.1%	6.6%	1.4%	32.0%	33.4%
Source: CVAP, 2013-2017, US Census, ACS, https://www.census.gov/programs-surveys/decennial-census/about/voting-rights/cvap.html .							

TABLE 2 POPULATION CHANGE, 2000 TO 2013-2107, TOTAL, VOTING AGE POPULATION, CITIZEN VOTING AGE PERCENTAGES BY RACE, VIRGINIA BEACH						
POP. MEASURE	NON-HISP. WHITE 2000	NON- HISP. WHITE 2013-2017	PERCENT CHANGE	ALL MINORITY 2000	ALL MINORITY 2013-2017	PERCENT CHANGE
TOTAL	69.4%	62.6%	-9.8%	30.6%	37.4%	+22.2%
VOTING AGE	72.1%	65.0%	-9.8%	27.9%	35.0%	+25.4%
CITIZEN VOTING AGE	73.3%	66.6%	-9.1%	26.7%	33.4%	+25.1%
Sources: CVAP, 2013-2017, US Census, ACS, U.S. Census 2000, Special Tabulation, Citizen Voting Age Population.						

CHART 1
MINORITY POPULATION CHANGE, 2000 TO 2013-2107, TOTAL, VOTING AGE
POPULATION (VAP), CITIZEN VOTING AGE (CVAP) PERCENTAGES, VIRGINIA
BEACH



As a result of its election system, the City of Virginia Beach is behind its neighbors in terms of minority representation on its city council. In 2003, Norfolk, with a black population of 44 percent and a district system of elections, had 3 black members on its 7-member city council. Meanwhile, Virginia Beach, with a black population of 19 percent and an at-large election system, had no black members on its 11-member city council. In fact, only two African Americans had ever been elected to the Virginia Beach city council from its founding in the 1960s through 2003, and none had survived reelection. Only one other minority—Filipino Ron A. Villaneuva—had ever been elected, and was serving in 2003.²⁹

In addition to the at-large election system, the allocation of polling place resources has been found to burden minority residents of Virginia Beach. A study of the allocation of polling place resources in 2004 and 2008 by Dr. Walter R. Mebane, Jr., Professor in the Department of Political Science and Statistics at the University of Michigan, found that allocation decisions in Virginia Beach had a discriminatory effect on voting opportunities for its predominant minority group of African Americans. His key findings are as follows:

“The distribution of machines in both Richmond and Virginia Beach for the upcoming [2008] election is clearly biased against voters in precincts with high proportions of African-Americans. In other words, precincts with high proportions of African-Americans have substantially more registered voters per allocated machine than precincts with fewer African Americans. There were similar relationships in the allocation of voting machines in 2004.”

“In both Richmond and Virginia Beach, as the proportion of the voting age population that is African American increases, the mean number of registered voters per voting machine also increases.”

“In examining the registration, turnout, and machine allocation data from the 2004 election, I found that higher ratios of registered voters per machine were associated with lower levels of voter participation in Norfolk, Richmond, and Virginia Beach. This indicates that voters in those precincts with relatively many voters for each machine were more likely to be deterred from voting than voters in precincts with fewer voters for each machine.”

“In Virginia Beach, voter participation declines steadily throughout the range of ratios observed in the city. The magnitude of the declines is substantial: from the peak value to the lowest the decrease in voter participation is on the order of five to ten percent.”³⁰

Like the rest of the Commonwealth, the City of Virginia Beach supported segregated schools that legally separated white and black students until it was court ordered to integrate in 1969. A study of school segregation by the Lewis Mumford Center for Comparative Urban and Regional Research University at Albany shows progress towards school integration in the Virginia Beach School District

²⁹ Bruce Murphy, “Virginia Beach, Nearby Cities Tell Complex Story of Black White Politics,” *Milwaukee Journal-Sentinel*, 23 February 2013, 011403MURPHYjsonline.pdf.

³⁰ Quotes are from *Virginia State Conf. of the NAACP v. Kaine*, No. 3:08-cv-00692 (E.D. Va. Nov. 3, 2008), “Expert Declaration of Walter Richard Mebane, Jr. on Behalf of Plaintiffs,” 27 October 2008, pp 7-9; see also the detailed statistical analysis in his additional report, “Voting Machine Provision and Allocation in the Virginia the 2008 General Election,” 27 October 2018.

in the two decades after the court order, followed by a reversal towards increasing segregation in the 1990s. The Center examined the “dissimilarity index”—which measures the percentage of African American students that would have to change schools to achieve system-wide integration—and found that the index declined from 45.0 in 1968 to 27.0 in 1990, but then rose to 32.7 by 2000. An updated study by The Heller School for Social Policy and Management examined segregation for African Americans and whites in Virginia Beach’s public and primary schools—which comprised 70 percent of enrollments for pre-college students according to the U.S. Census of 2010—and found that for the 2010-2011 school year, the dissimilarity index was a yet higher 38.9.³¹

African American pupils in Virginia Beach’s public schools also suffer disproportionately from suspensions and expulsions. An October 2017 study by the Legal Aid Justice Center reported that, as in the past, for the 2015-2016 academic year, “Virginia schools continue to issue a huge number of out-of-school suspensions, posting a slight increase from even the 2014-2015 totals.” Specifically, they found that “the majority of suspensions were issued for minor offenses, with approximately two-thirds of all suspensions given for behavior offenses, such as possession of cell phones, minor insubordination, disrespect, and using inappropriate language.” But “perhaps most disturbing is that Virginia schools continue to disproportionately suspend African American students and students with disabilities. The suspension rate for African-American students was 3.8 times larger than for Hispanic and white students.”

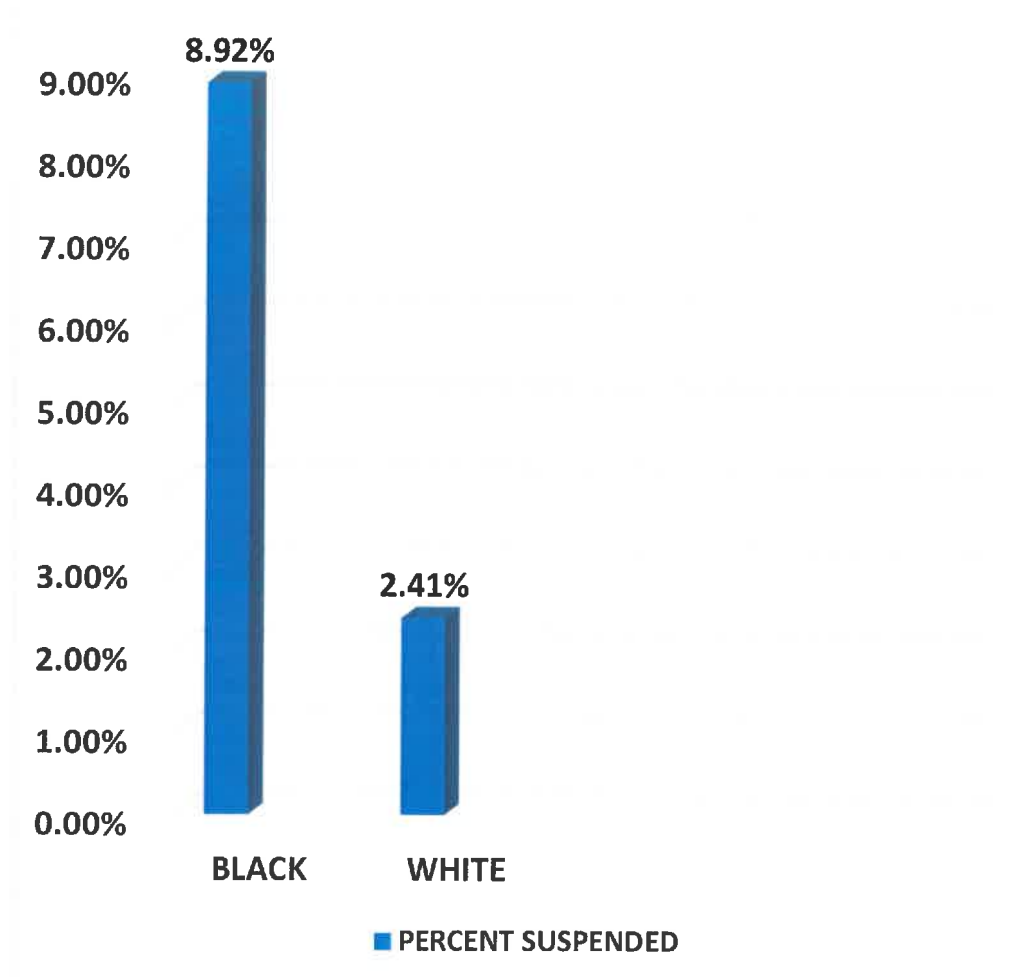
The Legal Aid Justice Center report compiled data on short-term suspensions for African Americans and whites in the City of Virginia Beach. As indicated in Chart 2, the short-term suspension rate for white students in Virginia Beach is comparable to the state rate for suspensions, while the rate of African American suspensions is 3.7 times higher than the white rate.³² This is nearly identical to the disparities that the study found statewide, where the suspension rate for African-American students was 3.8 times larger than the suspension rate for Hispanic and white students.³³

³¹ John R. Logan and Deidre Oakley, “The Continuing Legacy of the Brown Decision: Court Action and School Segregation, 1960-2000,” Lewis Mumford Center for Comparative Urban and Regional Research University at Albany, 28 January 2004, p. 10, <https://s4.ad.brown.edu/Projects/usschools/reports/report2.pdf>; “School Segregation (Dissimilarity Index): Public Primary School Students Dissimilarity with White (Non-Hispanic) Students by Race/Ethnicity,” 2010-2011, The Heller School for Social Policy and Management, <http://www.diversitydatakids.org/data/ranking/90/school-segregation-dissimilarity-index-public-primary-school-students-dissimilar#loct=6&tf=5&ch=2,3,4,5>.

³² *Ibid.*, p. 17.

³³ Amy Woolard, “Suspended Progress 2017: An Update on the State of Exclusionary Discipline in Virginia’s Public Schools,” Legal Aid Justice Center, October 2017, Executive Summary, pp. 3, 17, <https://www.justice4all.org/wp-content/uploads/2016/04/Suspended-Progress-2017.pdf>.

CHART 2
SHORT-TERM SUSPENSIONS BY RACE, PUBLIC SCHOOLS, VIRGINIA BEACH, 2015-2016.



Virginia Beach also lags in the employment of minority teachers relative to minority public school enrollment. According to a 2011 study by the Virginia Pilot, as compared to neighboring jurisdictions, “the racial imbalance is most pronounced in Virginia Beach, where 85 percent of public school teachers are white and close to half of students are not, statistics show.” The study found that “the demographic imbalance isn't unique to Virginia Beach, but the disparity is sharper there than in surrounding school divisions. Statewide, 43 percent of students and 17 percent of teachers are minorities.” Virginia Beach, on the other hand, “employs one white classroom teacher for every nine white students but only one minority teacher for every 43 minority students.” This imbalance affects all minority groups in Virginia Beach, including African Americans, Hispanics, and Asians.³⁴ Although there are generally challenges in recruiting minority teachers, that issue does not explain the sharper racial imbalance in Virginia Beach as compared to other Virginia communities given that the challenge is ubiquitous across markets.

³⁴ All quotes from: Mike Hixenbaugh, “Teacher-Student Racial Imbalance Widest in Va. Beach,” *Virginia Pilot*, 17 September 2011, https://pilotonline.com/news/local/education/article_99d4e10f-7582-5625-b2c5-549983e5f028.html??dssReturn=true.

Factor 2: The extent to which voting in the elections of the state or political subdivision is racially polarized.

The report of Dr. Douglas M. Spencer of the University of Connecticut establishes that voting is polarized along racial lines in Virginia Beach between whites and African Americans (the predominant minority group in Virginia Beach), and generally between whites and all minorities (blacks, Hispanics, Asians, and a small number of others). For city council elections studied from 2008 to 2018, blacks and all minorities typically preferred to vote for black candidates and whites typically preferred to vote for white candidates. White bloc voting usually defeated city council candidates of choice of blacks and minorities.

From 2008 to 2016, only one black candidate—Amelia Ross-Hammond—won election to a city council position, but she was defeated in her reelection bid by a 27-year-old white woman. No black candidate has ever won reelection to a city council position in Virginia Beach, even though white incumbents typically win reelection in the city.

In 2018, for the first time in the history of Virginia Beach, two minority candidates—African Americans Rouse (at-large) and Wooten (Centerville District)—won election to city council. Wooten was the only minority candidate since 2008 to emerge as the candidate of choice of white voters, although she was competing against another black candidate and a token white candidate who won only 6 percent of the overall vote. Rouse, the first choice of black and other minority voters, was not first or second candidate of choice of white voters, although he did gain unusually high white support.

It is important to note that the 2018 elections took place during the pendency of this lawsuit and thus represent a special circumstance that must be considered in evaluating election results. A detailed analysis of the special circumstances involving Rouse and Wooten in 2018 is presented under Factor 7 (page 43), which focuses on the extent to which members of the minority group have been elected to public office in the jurisdiction.

The results of federal elections for the precincts of Virginia Beach further validates the pattern of racially polarized voting that Dr. Spencer identifies for city council elections. Dr. Spencer analyzed the presidential general elections of 2008 and 2012, the Democratic presidential primary of 2008, and the 2016 general election in Congressional District 2. He found a pattern of substantial racially polarized voting in these four federal elections. In 3 of 4 elections, white bloc voting defeated the candidate of choice of black and minority voters within the precincts of Virginia Beach. The one exception is the 2008 Democratic primary for president, in which Obama was the candidate of choice of all racial groups in Virginia Beach. Statewide, Obama swept the 2008 Democratic presidential primary statewide with 64 percent of the vote and won in Virginia Beach. However, according to Dr. Spencer, Obama garnered a much higher percentage of the black and minority vote than the white vote.

Factor 3: The extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group.

Minority candidates compete at-large for city council in Virginia Beach, meaning that they have to cover an entire municipality which is unusually large both in area (249 square miles) and population (450,055 persons). In addition, 7 positions have designated, or numbered posts, which are elected at-large. These designated positions prohibit minorities from single-shot voting for a candidate or concentrating their votes on a small number of candidates. Similarly, the election for mayor, who is also a member of the city council, involves a single-seat contest that precludes single-shot or concentrated voting. The staggering of the three non-designated city council elections likewise makes single-shot or concentrated voting less effective. Under the staggered system for election to the three at-large positions in Virginia Beach, candidates compete for 1 position in one election year and 2 positions in the next election year. This renders single-shot or concentrated voting impossible in the case of the single-seat election and ineffective in the case of the 2 seat election.

Table 3 analyzes the method of election and the number of square miles in which a candidate must cover to win a city council seat for cities in Virginia with populations over 50,000. As indicated in Table 3, the square miles that candidates must cover in Virginia Beach is typically far higher than the square miles that candidates must cover on average in other cities. Though the square mileage is slightly greater in Chesapeake and Roanoke than in Virginia Beach, the square mileage in Virginia Beach is many multiples higher than in the ten other cities. The ratio of the square mileage for the place of election in Virginia Beach as compared to these other cities ranges from 2.5 to 1 to 37.7 to 1.

Table 4 analyzes the population size that city council candidates must cover to win a city council seat in the same Virginia cities. The population size for Virginia Beach is many multiples higher than in any of the 12 other cities in Table 4. The ratio of the population for the place of election in Virginia Beach as compared to these other cities ranges from 1.9 to 1 to 21.3 to 1.

TABLE 3 VIRGINIA CITIES WITH MORE THAN 50,000 POPULATION, AVERAGE SQUARE MILES OF PLACE OF ELECTION FOR CITY COUNCIL					
CITY	POPULATION US CENSUS 2018	SQ. MILES US CENSUS	METHOD OF ELECTION CITY COUNCIL	MEAN SIZE, PLACE OF ELECTION SQ. MILES	RATIO SIZE OF PLACE VA BEACH TO OTHER CITY
VIRGINIA BEACH	450,055	249	At-Large	249	NA
NORFOLK	242,827	54.1	5 Wards, 2 Superward	15.4	16.2 to 1
CHESAPEAKE	242,624	340.8	At-large, 7 Seats	340.8	.73 to 1
RICHMOND	228,783	59.8	9 Districts	6.6	37.7 to 1
NEWPORT NEWS	178,626	68.7	1 At-large (Mayor), 6 Districts	11.5	21.7 to 1
ALEXANDRIA	160,530	15	At-large, 7 Seats	15	16.6 to 1
HAMPTON	134,313	51.4	At-large, 7 Seats	51.4	4.8 to 1
PORTSMOUTH	94,632	33.7	At-large, 7 Seats	33.7	7.4 to 1
ROANOKE	94,073	250.6	At-large, 7 Seats	250.6	.99 to 1
SUFFOLK	84,572	400	7 Boroughs,	100	2.5 to 1
LYNCHBURG	82,126	49.1	4 Ward, 3 At-large	22.8	10.9 to 1
HARRISONBURG	54,033	17.4	At-large, 5 Seats	17.4	14.3 to 1
LEESBURG	53,914	12.4	At-large, 7 Seats	12.4	20.1 to 1
Sources: U.S. Census Quick Facts, Municipal websites.					

TABLE 4 VIRGINIA CITIES WITH MORE THAN 50,000 POPULATION, AVERAGE POPULATION OF PLACE OF ELECTION FOR CITY COUNCIL				
CITY	POPULATION US CENSUS 2018	METHOD OF ELECTION, CITY COUNCIL	AVERAGE POPULATION OF PLACE OF ELECTION	RATIO VA BEACH TO CITY POPULATION
VIRGINIA BEACH	450,189	At-Large	450,159	NA
NORFOLK	242,827	5 Wards, 2 Superwards	69,379	6.5 to 1
CHESAPEAKE	242,624	At-large, 7 Seats	242,624	1.9 to 1
RICHMOND	228,783	9 Districts	25,420	17.7 to 1
NEWPORT NEWS	178,626	1 At-large, 6 Districts	51,036	8.8 to 1
ALEXANDRIA	160,530	At-large, 7 Seats	160,530	2.8 to 1
HAMPTON	134,313	At-large, 7 Seats	134,313	3.4 to 1
PORTSMOUTH	94,632	At-large, 7 Seats	94,632	4.8 to 1
ROANOKE	94,073	At-large, 7 Seats	94,073	4.8 to 1
SUFFOLK	84,572	7 Boroughs, 1 At-large	21,143	21.3 to 1
LYNCHBURG	82,126	4 Ward, 3 At-large	46,929	9.6 to 1
HARRISONBURG	54,033	At-large, 5 Seats	54,033	8.3 to 1
LEESBURG	53,914	At-large, 7 Seats	53,914	8.3 to 1
Sources: U.S. Census Quick Facts, Municipal websites.				

Factor 4: If there is a candidate slating process, whether the members of the minority group have been denied access to that process.

Although I have not yet uncovered evidence of formal slating for city council candidates in Virginia Beach, I have probed the issue by examining the extent to which candidates unite to finance each other's campaigns. For white and black candidates from 2008 to 2018, Tables 5 and 6 report the white and black candidates respectively who have received at least \$250 in contributions from two or more other candidates who ran for city council during this period.

As indicated in these tables, such combined support is largely confined to white candidates. Table 5 demonstrates that 17 white candidates received a minimum contribution of \$250 from two or more other candidates. Only 3 of the contributors were black. All other contributions came from white candidates.

Table 6 demonstrates that only 2 black candidates received a minimum contribution of \$250 from two or more other candidates. These candidates were Wooten in 2018 and elected incumbent Ross-Hammond in 2016. The ratio of white to black candidates receiving \$250 or more from 2 or more other candidates is 8.5 to 1.

TABLE 5 WHITE CITY COUNCIL CANDIDATES, VIRGINIA BEACH, WITH AT LEAST \$250 IN CONTRIBUTIONS FROM TWO OR MORE OTHER CANDIDATES, 2008 TO 2018	
CANDIDATE	OTHER CANDIDATE CONTRIBUTORS (BLACK CANDIDATES IN BOLD)
BELITTO	SESSOMS, DIEZEL, UHRIN, DAVIS
DALE	JONES, SESSOMS,
DAVIS	JONES, SESSOMS, UHRIN, WILSON, DIEZEL
DEAN	MOSS, DESTEPH,
FREE	DESTEPH, WILSON
GOLDEN	DESTEPH, MOSS
HENLEY	DAVENPORT, SESSOMS, UHRIN, JONES
JONES	SESSOMS, WILSON
KANE	SESSOMS, JONES, DAVIS, WOOD, WILSON, UHRIN
MARTIN	SESSOMS, JONES, UHRIN, WOOD, WILSON
MCCORMICK	DESTEPH, MOSS
MOSS	JONES, KOWALEWITCH, BLYTHE, DEAN, WORST
REDMOND	SESSOMS, UHRIN,
SESSOMS	UHRIN, OLIVER, BRIGHT , KANE, MARTIN, SHERROD ,
UHRIN	SESSOMS, DAVENPORT, WILSON, DAVIS
WILSON	JONES, DAVENPORT, WOOD, DAVIS, SESSOMS, JONES, UHRIN
WOOD	DAVENPORT, UHRIN, SESSOMS, SHERROD , DIEZEL
Source: Virginia Public Access Project, "Money," https://www.vpap.org/money/ .	

TABLE 6 BLACK CITY COUNCIL CANDIDATES, VIRGINIA BEACH, WITH AT LEAST \$250 IN CONTRIBUTIONS FROM TWO OR MORE OTHER CANDIDATES, 2008 TO 2018	
CANDIDATE	OTHER CANDIDATE CONTRIBUTORS (BLACK CANDIDATES IN BOLD)
ROSS-HAMMOND	SESSOMS, JONES, BRIGHT , DIEZEL, UHRIN, DAVENPORT *
WOOTEN	SESSOMS, WILSON, DAVENPORT
* Contributions from 2016 when Ross-Hammond was elected incumbent.	
Source: Virginia Public Access Project, "Money," https://www.vpap.org/money/ .	

Factor 5: The extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process.

The lingering effects of past discrimination are amply demonstrated in the deficient socio-economic position of minorities in Virginia Beach. These disparities, which exist with regard to income, unemployment, poverty, education, and housing, are documented in Tables 7-9 and Charts 3 to 9. The data for whites, blacks, and Asians is for non-Hispanics only, and the black and Asian metrics include multi-race individuals. As indicated in the section discussing the history of discrimination (Factor 1, page 4), socio-economic disparities have an important impact on restricting the opportunities for minorities to participate fully in the political process and elect candidates of their choice. The election system described above (Factor 3, page 22), which features at-large elections spanning large areas and populations with virtually no single-shot voting ability, magnifies the effects of socio-economic disparities.

Table 7 and Charts 3 through 5 demonstrate substantial disparities between non-Hispanic whites and both non-Hispanic African Americans and Hispanics on all standard economic and educational measures in Virginia Beach. For African Americans and Hispanics, the economic disparities are evident for income, poverty, unemployment, welfare assistance, and the availability of health insurance. Disparities for Asian Americans, although less substantial than for blacks and Hispanics, also emerge for per-capita income, poverty, welfare assistance, and the availability of health insurance.

Table 8 and Charts 6 and 7 similarly demonstrate substantial educational disparities between whites and African Americans and Hispanics for such standard measures as high school and college graduation rates and student performance on reading, writing, science, and mathematics. Disparities do not emerge for Asians on educational measures.

Table 9 and Charts 8 and 9 demonstrate substantial disparities between whites and both African Americans and Hispanics in rates of home ownership and the median value of owned homes. Disparities emerge for Asians in the value of homes. It also demonstrates disparities between non-Hispanic whites and African Americans in the availability of vehicles.

In sum, a wide range of economic, educational and housing measures, disparities between non-Hispanic whites and African Americans emerge for every measure. Disparities between non-Hispanic whites and Hispanics emerge for every measure but the availability of vehicles. Disparities emerge for Asians on per-capita income, poverty, welfare assistance, the availability of health insurance, and home value.

TABLE 7 ECONOMIC MEASURES BY RACE VIRGINIA BEACH, US CENSUS, AMERICAN COMMUNITY SURVEY, 2011-2015				
MEASURE	BLACK	HISPANIC	ASIAN	WHITE
MEDIAN HOUSEHOLD INCOME	\$51,559	\$54,825	\$72,001	\$71,948
PER CAPITA INCOME	\$22,773	\$20,784	\$26,512	\$37,443
POVERTY RATE FOR PERSONS INDIVIDUALS	14.4%	14.2%	7.4%	5.8%
UNEMPLOYMENT RATE	9.2%	8.8%	4.6%	5.0%
% WITH FOOD STAMPS/SNAP	15.9%	10.9%	5.5%	4.1%
18-64 NO HEALTH INSURANCE	17.1%	24.5%	15.7%	11.6%

CHART 3
MEDIAN HOUSEHOLD AND PER CAPITA INCOME BY RACE, VIRGINIA BEACH

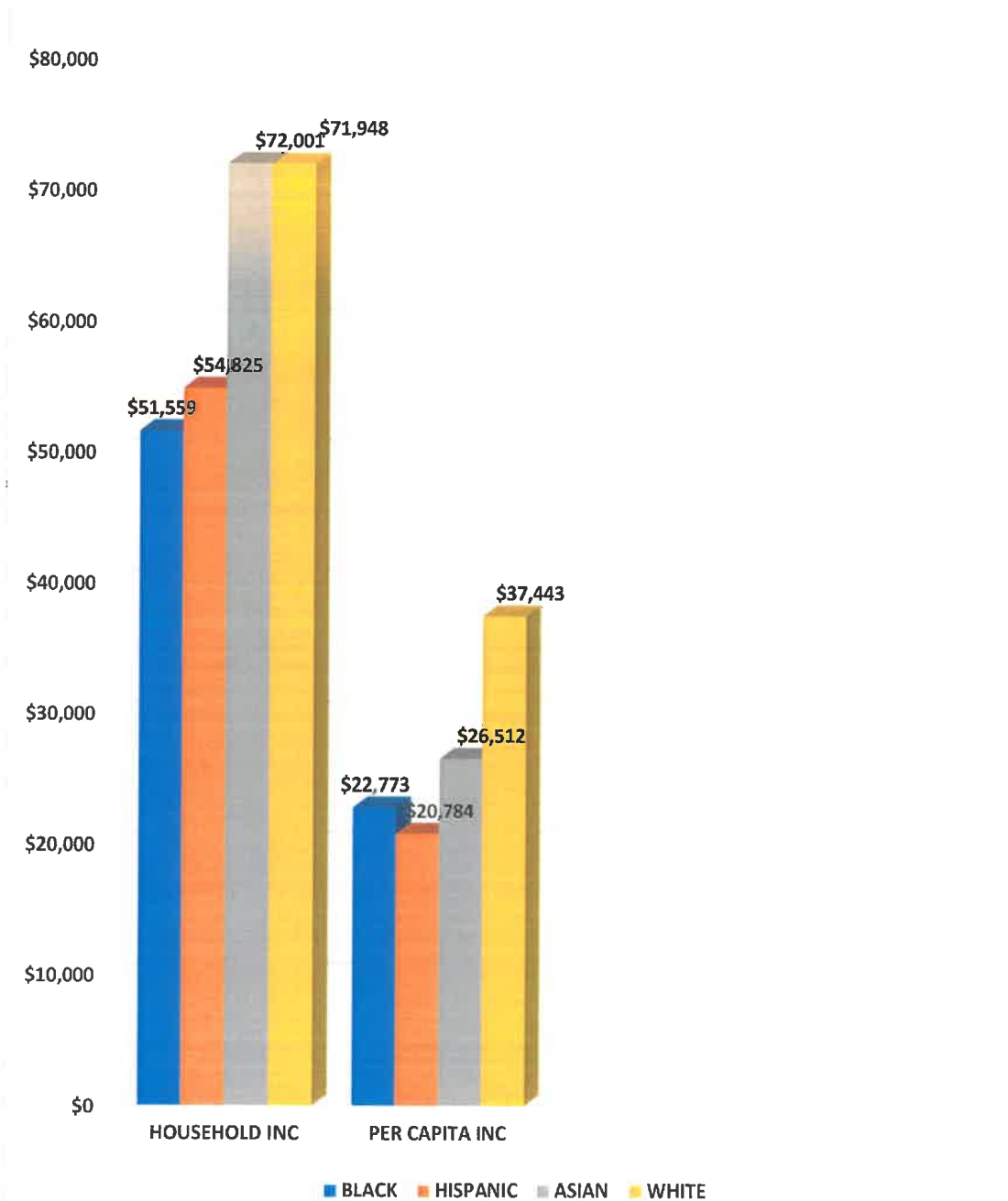


CHART 4
POVERTY, UNEMPLOYMENT & FOOD STAMPS RATE BY RACE,
VIRGINIA BEACH

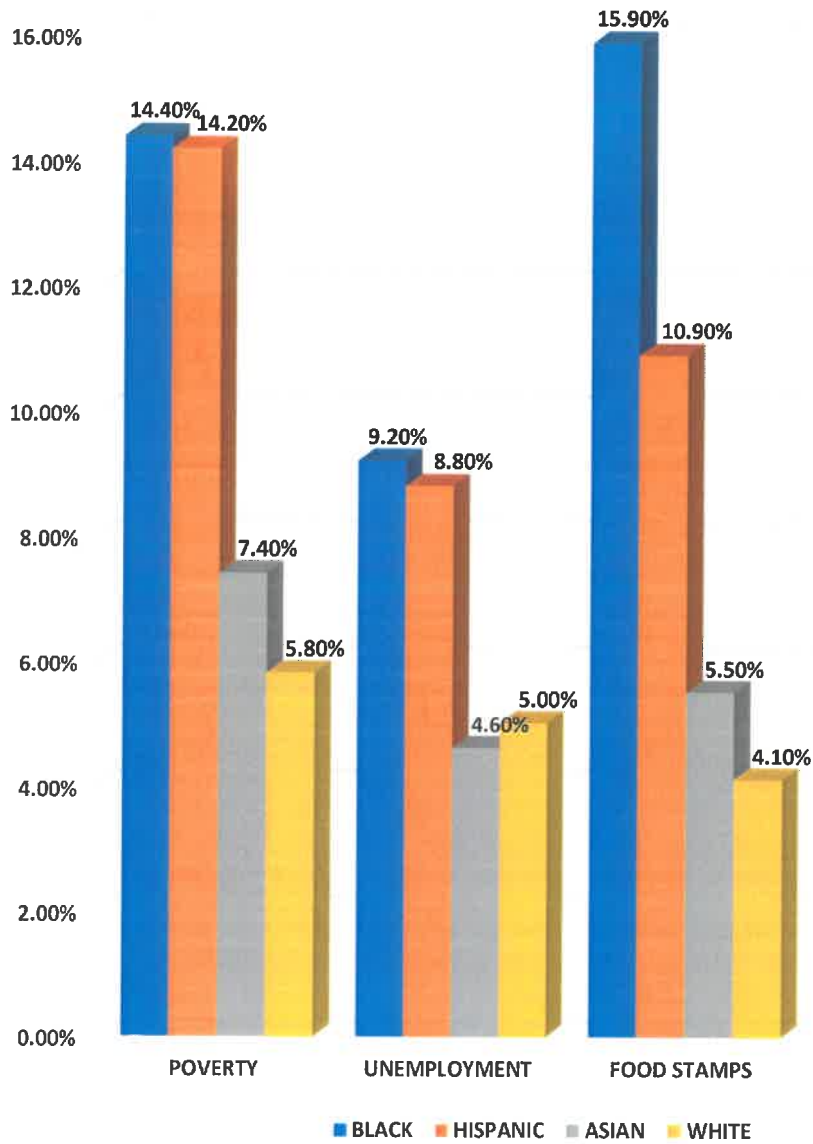


CHART 5
NO HEALTH INSURANCE, 18-64 YEARS-OLD BY RACE, VIRGINIA BEACH

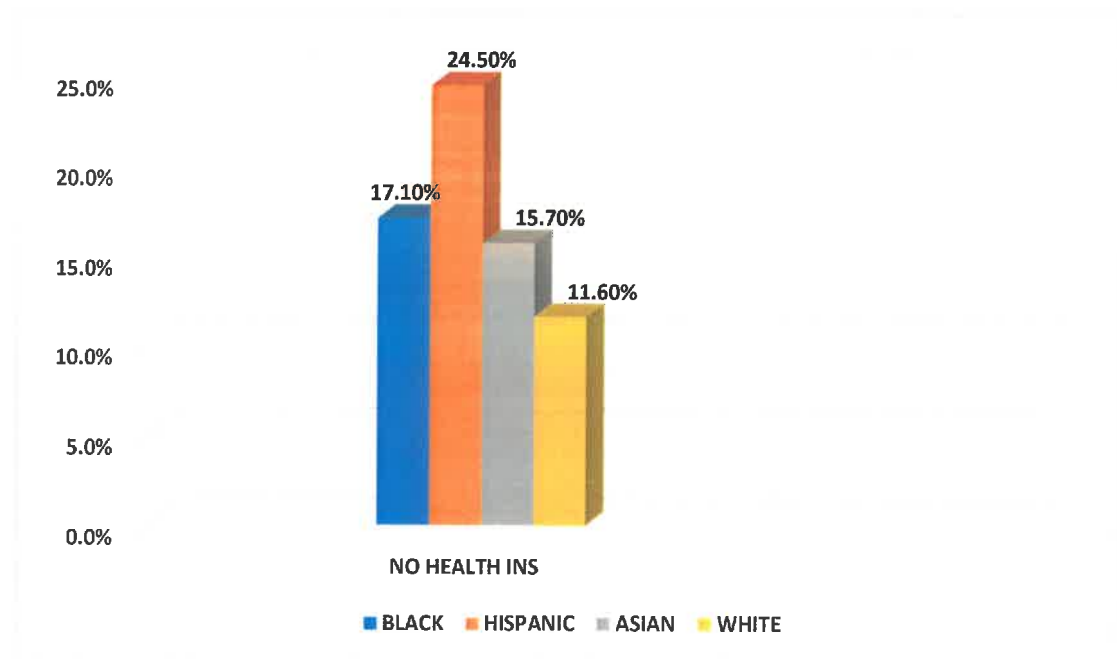


TABLE 8 EDUCATION MEASURES BY RACE VIRGINIA BEACH				
MEASURE	BLACK	HISPANIC	ASIAN	WHITE
HIGH SCHOOL GRADUATES	89.4%	88.7%	91.8%	95.0%
BACHELOR'S DEGREE OR MORE	25.3%	21.8%	41.6%	36.4%
PASS: ENGLISH READING	74%	84%	91%	91%
PASS: ENGLISH WRITING	68%	81%	90%	89%
PASS: SCIENCE	69%	82%	94%	92%
PASS: MATH	70%	81%	94%	88%
Sources: Us Census, American Community Survey, 2011-2015; Virginia State Board of Education, SOL Test Results, 2017-2018, http://www.doe.virginia.gov/statistics_reports/sol-pass-rates/index.shtml .				

CHART 6
EDUCATIONAL ATTAINMENT BY RACE, VIRGINIA BEACH

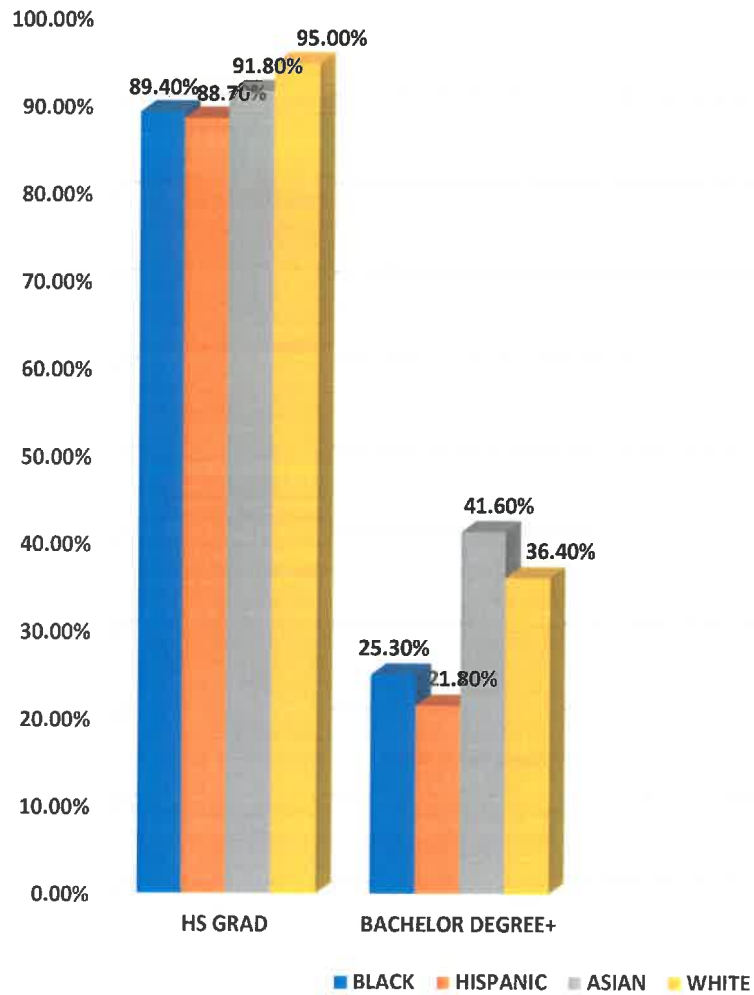


CHART 7
STUDENT ACHIEVEMENT SCORES, PASS RATES BY RACE, VIRGINIA BEACH

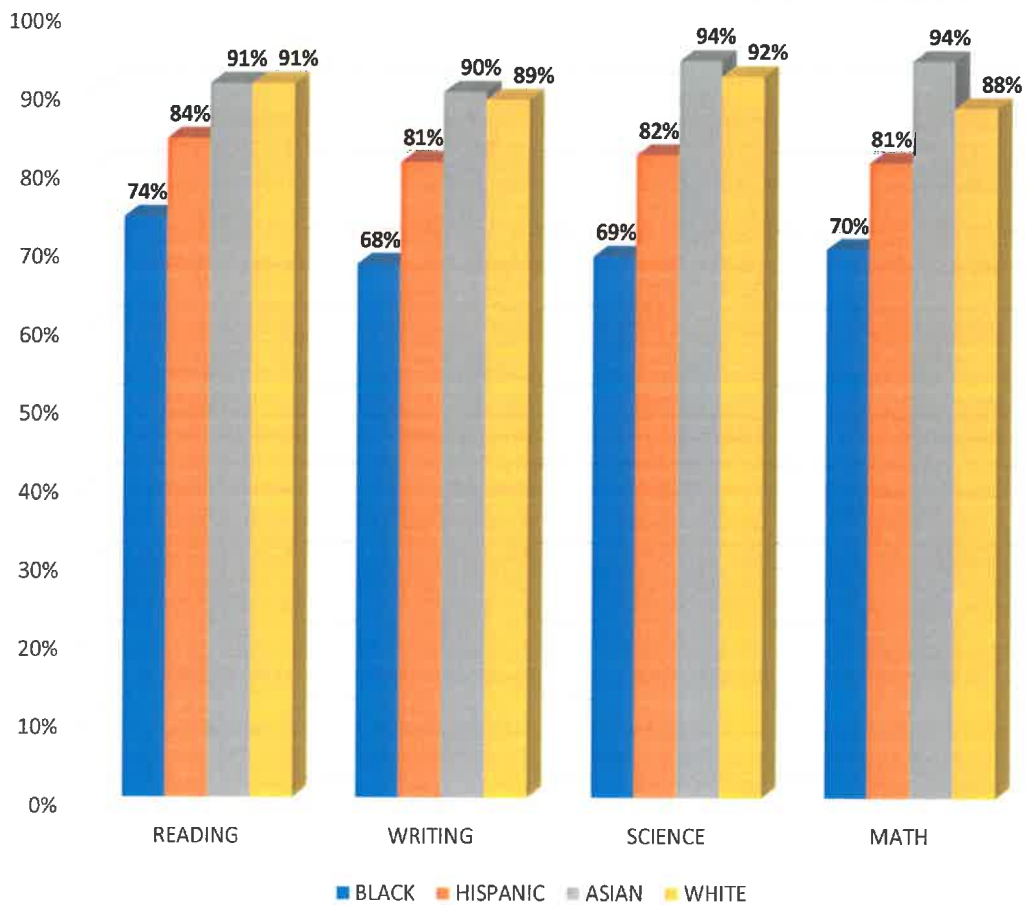


TABLE 9 HOUSING CHARACTERISTICS BY RACE, VIRGINIA BEACH, 2011-2015 US CENSUS, AMERICAN COMMUNITY SURVEY				
MEASURE	BLACK	HISPANIC	ASIAN	WHITE
PERCENT OWNER OCCUPIED	44.9%	46.1%	69.4%	69.5%
MEDIAN HOME VALUE	\$218,100	\$231,400	\$253,400	\$273,700
PERCENT WITH NO VEHICLE	8.3%	2.7%	2.0%	3.2%

CHART 8
MEDIAN HOME VALUE BY RACE, VIRGINIA BEACH

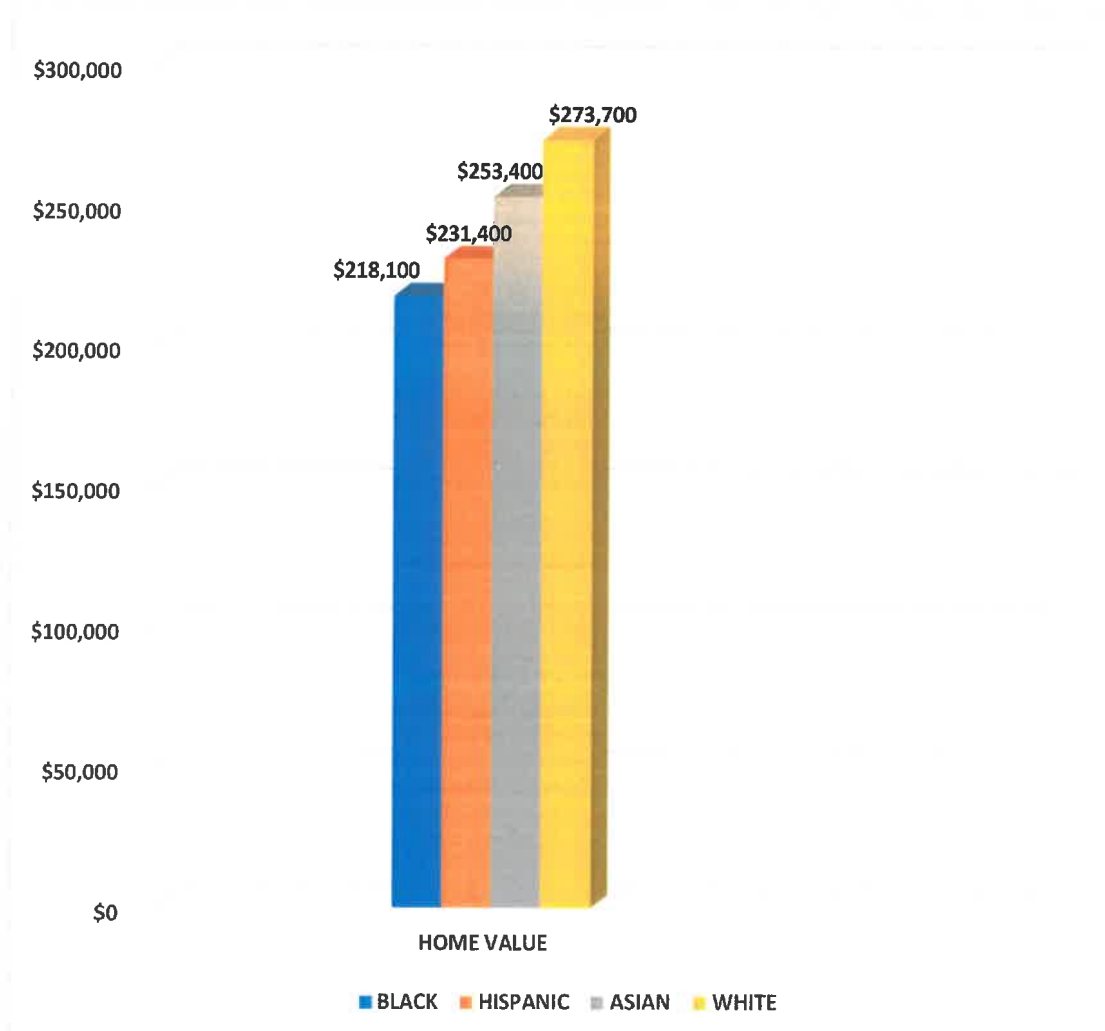
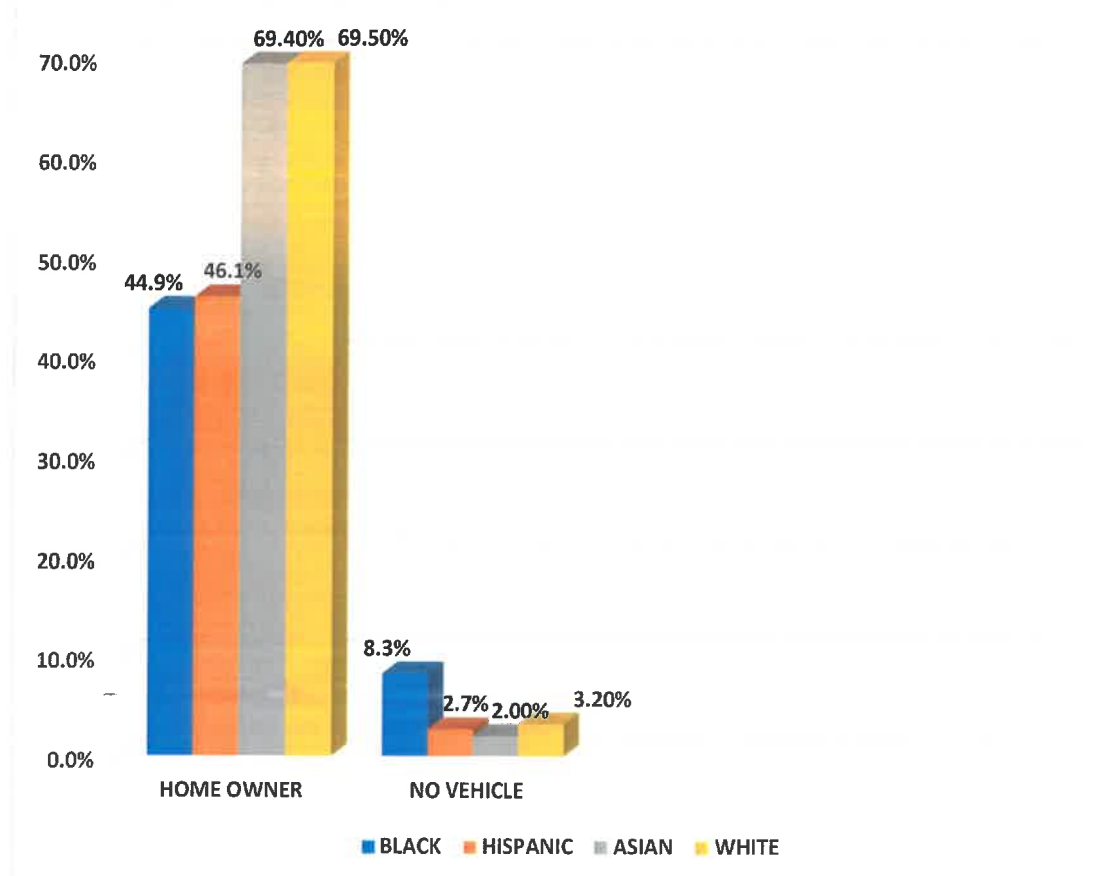


CHART 9
HOME OWNERSHIP AND VEHICLE AVAILABILITY BY RACE, VIRGINIA
BEACH



Factor 6: Whether political campaigns have been characterized by overt or subtle racial appeals.

Virginia political campaigns, including for officials elected from Virginia Beach, have been marked in recent years by overt racial appeals. In the 2006 campaign for U.S. Senate, incumbent Republican candidate and former governor George Allen called a volunteer of East Indian descent for his Democratic opponent Jim Webb a “macaca.” This racial slur occurred at a rally for Allen, where the volunteer, S.R. Sidarth said, “I was the only person of color there.” Pointing at Sidarth, Allen said:

“This fellow here, over here with the yellow shirt, macaca, or whatever his name is. He’s with my opponent. He’s following us around everywhere. And it’s just great,” ... “Let’s give a welcome to macaca, here. Welcome to America and the real world of Virginia.”³⁵

The word *macaca* sounds like and refers to a monkey. After Allen’s remarks stirred controversy, his campaign manager dismissed the matter by saying that Allen had “nothing to apologize for.” Later, however, Allen did apologize, saying: “I would never want to demean him as an individual. I do apologize if he’s offended by that. That was [in] no way the point.” This was not the first time, however, that Allen acted in a way offensive to minorities.³⁶ For example, as Governor, Allen issued a proclamation noting the South’s celebration of Confederate History Month without any mention of slavery. In 2010, Governor Bob McDonnell reignited this controversy by yet again issuing a Confederate History proclamation without any mention of slavery.³⁷

On Halloween 2011, shortly before the general election, the Republican Party of Loudon County, Virginia circulated via email a photo montage showing President Barack Obama with a bullet in his head and various Obama supporters as grotesque zombie figures (reproduced below). The image was condemned by the statewide Virginia Republican Party and the Loudon County Republican Chair Mark Sell issued an apology saying, “we deeply and sincerely apologize to the president and anyone who viewed the image ... The LCRC deplores any effort to display, suggest or promote violence against the president or any other political figure.”³⁸

Even after the controversy over the Loudon GOP montage, the Republican Party of Mecklenburg County, Virginia posted on its Facebook page images of President Obama as a witchdoctor, a caveman, and a thug during the run-up to the 2012 general election. Once again,

³⁵ Video of Allen available at <https://www.youtube.com/watch?v=r90z0PMnKwI>.

³⁶ Tim Craig and Michael D. Shear, “Allen Quip Provokes Outrage, Apology,” *Washington Post*, 15 August 2006, <http://www.washingtonpost.com/wp-dyn/content/article/2006/08/14/AR2006081400589.html>.

³⁷ Anita Kumar and Rosalind S. Helderan, “McDonnell’s Confederate History Month Proclamation Irks Civil Rights Leaders,” *Washington Post*, 7 April 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/04/06/AR2010040604416.html>.

³⁸ Tim Mack, “GOP Group Blasted for Obama Image,” *Politico*, 1 November 2011, <http://www.politico.com/story/2011/11/gop-group-blasted-for-obama-image-067315>.

Loudon County Republican Party Halloween Emailed Image, 2011
(Source Politico, 1 November 2011)



the state Republican Party condemned the images, but the head of the Mecklenburg Republicans, R. Wallace Mullins, refused to back down. He said, “if that group is that sensitive, I’m sorry, they’re just not human,” chuckling. “It’s not American. If they’ve got a problem with it, we’re not going to change what we do.”³⁹

During the Republican primaries in 2017, gubernatorial candidate Corey Stewart embraced Confederate symbols and upheld the Confederacy as part of Virginia’s heritage. He attended the “Old South Ball” in 2017 and said that Virginia was the state of Confederates Robert E. Lee and Stonewall Jackson and that the Confederate flag “is our heritage, it is what makes us Virginia, and if you take that away we lose our identity.” Stewart narrowly lost the Republican gubernatorial nomination to Ed Gillespie, but was nominated in 2018 as the Republican candidate for the U.S. Senate.⁴⁰

In August 2017, the Republican Party of Virginia posted two tweets which asserted that Democratic candidate Ralph Northam had “turned his back on his own family’s heritage in demanding monument removal” and that he “would do or say anything to try and be #VAGov. - #Pathetic.”⁴¹ The tweets shortly followed violent white supremacist protests in Charlottesville, which ostensibly centered around the removal of Confederate statues in the city, and during which a white supremacist participant killed a young woman and was subsequently convicted for murder. Several Democrats charged that Virginia Republicans had appealed to white supremacists in its tweets about candidate Northam. The Republican Party later apologized and deleted the tweets, claiming to have intended to argue that Northam had turned on his family members who had been injured fighting for the Confederacy during the Civil War.⁴²

During the 2017 gubernatorial campaign, Republican candidate Ed Gillespie issued a campaign video attacking the Democratic candidate for supporting the removal of Confederate statutes in Virginia. Gillespie promised to preserve such statutes as symbols of “our history.”⁴³

In that same election, the Latino Victory Fund ran an ad in which a truck displaying a Gadsden flag license plate, a Confederate flag, and an Ed Gillespie bumper sticker chases down a black child and children who appear to be of Latino descent. Another child appears to be of Middle Eastern, North African, or South East Asian descent and wears a hijab. The driver of the truck is

³⁹ Laura Vozella, Va. GOP Orders Affiliate to Remove “Offensive” Obama Images,” *Washington Post*, 25 September 2012, https://www.washingtonpost.com/local/dc-politics/va-gop-orders-affiliate-to-remove-offensive-obama-photos/2012/09/25/8c17d62c-0741-11e2-858a-5311df86ab04_story.html.

⁴⁰ Jane Coaston, “Virginia Republicans Just Nominated an alt-Right Hero to Run For Senate,” *Vox*, 8 August 2018, <https://www.vox.com/2018/6/13/17458452/alt-right-corey-stewart-virginia-gop>.

⁴¹ Eli Watkins, “Virginia GOP Deletes Confederate ‘Heritage’ Tweet Targeting Democrats,” *CNN*, 23 August 2013, <https://www.cnn.com/2017/08/23/politics/ralph-northam-birginia-confederacy/index.html>.

⁴² Graham Moomaw, “Virginia Republican Party Apologizes For Saying Northam Rejected His ‘Family’s Heritage’ By Opposing Confederate Statues,” *Richmond Times-Dispatch*, 23 August 2017, https://www.richmond.com/news/virginia/government-politics/virginia-republican-party-apologizes-for-saying-northam-rejected-his-family/article_91413fad-e6af-5ccc-b175-636704345ee2.html.

⁴³ https://www.youtube.com/watch?v=JSd_rxHXvsU.

white. The ad ends with footage of a 2017 march at the University of Virginia, where participants shouted anti-Semitic chants and advocated for white supremacist viewpoints.⁴⁴

In 2017, The Dominion Leadership Trust issued two mailers against Democratic House of Delegates candidate Elizabeth Guzman (D-31), who had immigrated from Peru. The mailer shows a gun with bullets, alcohol, and a sticker saying, “I voted,” and claims that Guzman supported allowing “illegal aliens” to obtain driver’s licenses. The mailer warns that if Guzman gets elected, “[illegal aliens] and even criminals will have the ID they need to buy a gun.” One mailer shows six bullet holes in a piece of glass and states, “If you fear this in your neighborhood, then you should fear this...”⁴⁵

In the same year, the Republican House of Delegates candidate Richard Anderson’s campaign sent out a mailer targeting his Democratic rival, Hala Ayala (D-51). The mailer depicts what appears to be a black man cast in darkness, wearing a hood and holding a wooden post. It says, “Hala Ayala: Restore rights to felons: thugs, violent criminals, gang members, and child predators.”

There are at least two instances of racial appeals during political campaigns in Virginia Beach. In 1998, Louisa Strayhorn faced racial appeals in her losing reelection bid after becoming only the second African American elected to the Virginia Beach city council four years prior. “I had phone calls saying, ‘We’re going to make sure that nigger doesn’t get elected.’ After the election, people would drive by and say, ‘See, nigger, we said we’d get you,’” she recalled in 2003. She also said in a 2009 interview that her campaign workers had received racist threats in 1998.⁴⁶

During the 2017 House of Delegates elections, Delegate Rocky Holcomb (R-85 in Virginia Beach) launched an ad which said that his Democratic opponent Cheryl Turpin wanted to reinstate parole in Virginia “and let rapists out of jail early.” The ad shows a dark hand over the mouth of a little girl who clearly appears to be white. Under the picture is the caption, “Police: Convicted rapist out on parole attacked 7-year old girl.”⁴⁷

⁴⁴ “New Ad Seeks to Link Gillespie to Racism,” *WAMU*, 30 October 2017,

<https://wamu.org/story/17/10/30/democratic-advocates-run-ads-blasting-gops-gillespie-racism-xenophobia/>.

⁴⁵ Patrick Wilson, “This Virginia House Candidate Says Her Opponent’s Mailers Hurt Her. But Not in the political Way,” *Richmond Times-Dispatch*, 19 October 2017, https://www.richmond.com/news/virginia/government-politics/this-virginia-house-candidate-says-her-opponent-s-mailers-hurt/article_3f6a7b8f-f41e-5ed0-968f-ccf5dc0d48bc.html.

⁴⁶ Murphy, “Virginia Beach, Nearby Cities Tell Complex Story of Black White Politics;” Deidre Fernandes, “Checkered History: For Va, Beach Blacks Power Still Elusive,” *Virginian-Pilot*, 9 September 2009, https://pilotonline.com/news/article_4eaa0c4-0c3d-5722-9e67-1e72606620c0.html.

⁴⁷ Jennifer Portnoy, “Attack Ads Multiply in the Final Days Before Virginia Election,” *Washington Post*, 2 November 2017, https://www.washingtonpost.com/local/virginia-politics/attack-ads-multiply-in-the-final-days-before-the-virginia-election/2017/11/01/7a88a174-bf3e-11e7-8444-a0d4f04b89eb_story.html?utm_term=.f0f9b7cb6bf7.

Turpin struck back with an ad of her own that attempted to link Holcomb to white hate groups. In turn, Scott Pressler, the person depicted in the ad next to Holcomb, sued Turpin for defamation, claiming that he was not a racist or a hate group leader.⁴⁸

⁴⁸ Joshua Weinstein, "Defamation Lawsuit Against Del. Cheryl Turpin Hinges on Definitions," All News 102, 19 January 2019, <https://allnews102.com/latest-news/2019/01/30/defamation-lawsuit-against-del-cheryl-turpin-hinges-on-definitions/>.

Paid for by the Republican Party of Virginia-www.rpv.org
Authorized by Rocky Holcomb, candidate for Delegate
115 East Grace Street
Richmond, VA 23219

Non-Profit Org.
U.S. Postage
PAID
Richmond, VA
Permit #551

LIBERAL CHERYL TURPIN

**WANTS TO BRING
BACK PAROLE**

**& LET RAPISTS OUT
OF JAIL EARLY**



Virginia abolished all discretionary parole in 1994. Since the abolition of parole, violent criminals in Virginia are required to serve at least 85 percent of their sentences—no exceptions.

Now, Cheryl Turpin wants to restore parole for convicted felons in Virginia. With the safety of our families and children at stake, we can't take that chance.

Cheryl Turpin puts the interests of criminals ahead of the interests of rape victims and our community.

**VOTE ON NOV. 7TH
YOU CAN STOP CHERYL'S
TURPIN'S DANGEROUS PLAN**

1. Public statements said at Arrowhead Civic League Meeting, 9/12/17



Other States Currently Have Parole and it's a Nightmare.

**Police: Convicted rapist out on
parole attacked 7-year-old girl**

**A convicted rapist has been arrested and charged with
sexually assaulting a 7-year-old girl, just six weeks after
he was released from prison, authorities said.**

FOX29.COM, 6/23/17

Factor 7: The extent to which members of the minority group have been elected to public office in the jurisdiction.

For a city that is 19.3 percent African American in citizen voting age population and has a citizen voting age population that is one-third non-white, Virginia Beach has a weak record in electing minority candidates to city positions. In the history of Virginia Beach, no African Americans and only one minority—Tina E. Sinnen, the current Latina Circuit Court Clerk—has ever been elected to any of the city’s five constitutional offices. The remaining officials elected citywide in Virginia Beach are white, including Treasurer, Sheriff, Commissioner of Revenue, and Commonwealth’s Attorney. Only one of 11 members of the elected School Board—African American Sharon R. Felton—is a minority. A second African American woman, Jessica L. Owens, was appointed to the School Board in 2019, during the pendency of this lawsuit. The congressional, state senate, and state House of Delegates districts that encompass at least parts of Virginia Beach have no elected African Americans or Asians representatives, and only one Hispanic elected official—Jason Miyares of the 82nd House of Delegates District.⁴⁹

From the city’s founding until 2016, only three African Americans—John Perry (1986), Louisa Strayhorn (1994), and Amelia Ross-Hammond (2012)—had been elected to the city council, and none won reelection. One African American—Prescott Sherrod—was appointed to a city council seat in 2011, but he was defeated in his attempt to keep his seat that November. Only one other non-black minority candidate (Filipino Ron A. Villanueva) has been elected to the city council. No Hispanics have ever been elected to the city council.⁵⁰

In 2018, two African Americans were elected to the city council. However, as previously noted, these elections occurred during the pendency of the current lawsuit a special circumstance for the election of members of a minority group.

In *Thornburg v. Gingles*, Justice Brennan emphasized the importance of discounting a sporadic minority success, *especially* after the filing of a voting rights lawsuit:

Moreover, in conducting its ‘independent consideration of the record’ and its ‘searching practical evaluation of the past and present reality,’ the District Court could appropriately take account of the circumstances surrounding recent black electoral success in deciding its significance to appellees’ claim. In particular, as the Senate Report makes clear, the court could properly notice the fact that black electoral success increased markedly in the 1982 election -- an election that occurred after the instant lawsuit had been filed -- and could properly consider to what extent ‘the pendency of this very litigation [might have] worked a one-time

⁴⁹ Form of Government and City Officials, Virginia Beach, <https://www.vbgov.com/government/departments/city-manager/Pages/form-of-government-and-city-officials.aspx>; School Board Members Virginia Beach, https://www.vbschools.com/about_us/our_leadership/school_board/members.

⁵⁰ Leonard E. Colvin, Virginia Beach, Portsmouth Voters to Elect City Council Members,” *New Journal & Guide*, 12 October 2018, <http://thenewjournalandguide.com/virginia-beach-portsmouth-voters-to-elect-city-council-members/>.

advantage for black candidates in the form of unusual organized political support by white leaders concerned to forestall single-member districting.⁸⁹

Other courts have held the same. In the city of Norfolk, which neighbors Virginia Beach, there had been only one African American on the city council from 1968 through 1984 under its at-large election system. In August 1983, plaintiffs filed the lawsuit *Collins v. City of Norfolk, Virginia* in federal court to challenge the at-large system. In response, the white leadership of the city, including the white mayor, sought to back the election of a second black city council member in the upcoming election in order to undermine the lawsuit. “After the election, the issue of black representation may become a moot point,” the mayor said.⁵¹

However, the Fourth Circuit Court of Appeals did not agree, ruling that even absent an explicit “conspiracy or an intent to moot this litigation ... does not end the district court’s inquiry.” The court offered important instruction for the analysis of black electoral success during the pendency of a lawsuit: “The court should probe further to determine whether the black candidate’s success in 1984, while this action was pending, resulted from unusual circumstances. Never before in the history of the city had two black councilmen served simultaneously.” It called for a particularized investigation of the facts of the election: “The mayor’s intent, or whether he and other white leaders conspired, is not dispositive.”⁵²

The court also provided important guidance on the kind of analysis that a social scientist expert should provide to the trier of fact: “If voting patterns showed unusual white support for the black candidate in 1984, the legal significance of this success should be diminished.”⁵³

The analysis below probes the white voter support for the two winning black Virginia Beach city council candidates in 2018. The results show that as compared to all other black city council candidates since 2008, Rouse and Wooten did receive “unusual white support.” Table 10 and Chart 9 compare the white vote for Rouse with the white vote for other black candidates for at-large seats (omitting perennial candidate Furman who has not been a black voter choice and whose inclusion would expand the difference between Rouse and other black candidates). As indicated in Table 10, the white vote for Rouse was higher than any of these other black candidates. With the exception of Allen in 2008, the white vote for Rouse was multiples higher than the white vote for the other candidates, with Rouse’s lead in percentage points ranging from 13.3 percentage points to 21.1 percentage points, and in percent, ranging from 124 percent to 728 percent. Overall, as indicated in Table 10 and Chart 9, white support for Rouse’s candidacy was 15.4 percentage points and 179 percent higher than the average white support of 8.6 percent for the 5 other black candidates.

⁵¹ *Collins v. City of Norfolk, Virginia*, 883 F.2d 1232 (4th Cir. 1989).

⁵² *Ibid.*

⁵³ *Ibid.*

TABLE 10 WHITE VOTE FOR AT-LARGE CITY COUNCIL CANDIDATE ROUSE IN 2018 COMPARED TO WHITE VOTE FOR OTHER BLACK CANDIDATES FOR AT- LARGE SEATS, VIRGINIA BEACH, 2008-2018			
CANDIDATE	% OF WHITE VOTERS FOR CANDIDATE	ROUSE: PERCENTAGE POINT DIFFERENCE WITH CANDIDATE	ROUSE: PERCENT DIFFERENCE WITH CANDIDATE
Rouse 2018	24%	NA	NA
Bright 2018	5.8%	+ 18.2 Percentage Points	+314 Percent
Sherrod 2011	10.7%	+ 13.3 Percentage Points	+124 Percent
Jackson 2010	3.8%	+20.2 Percentage Points	+532 Percent
Cabiness 2010	2.9%	+ 21.1 Percentage Points	+728 Percent
Allen 2008	20.0%	+4 Percentage Points	+20 Percent
Average 5 Other Candidates	8.6%	+15.4%	+179%
Source: Dr. Douglas M. Spencer, "Expert Report: Polarized Voting in Virginia Beach," July 15, 2019. White support is average of Ecological Inference (EI) and Ecological Regression estimates, which in several elections are identical and never differ substantially.			

CHART 9
WHITE VOTE FOR AT-LARGE CITY COUNCIL CANDIDATE ROUSE IN 2018
COMPARED TO AVERAGE WHITE VOTE FOR OTHER BLACK CANDIDATES FOR
AT-LARGE SEATS, VIRGINIA BEACH, 2008-2018

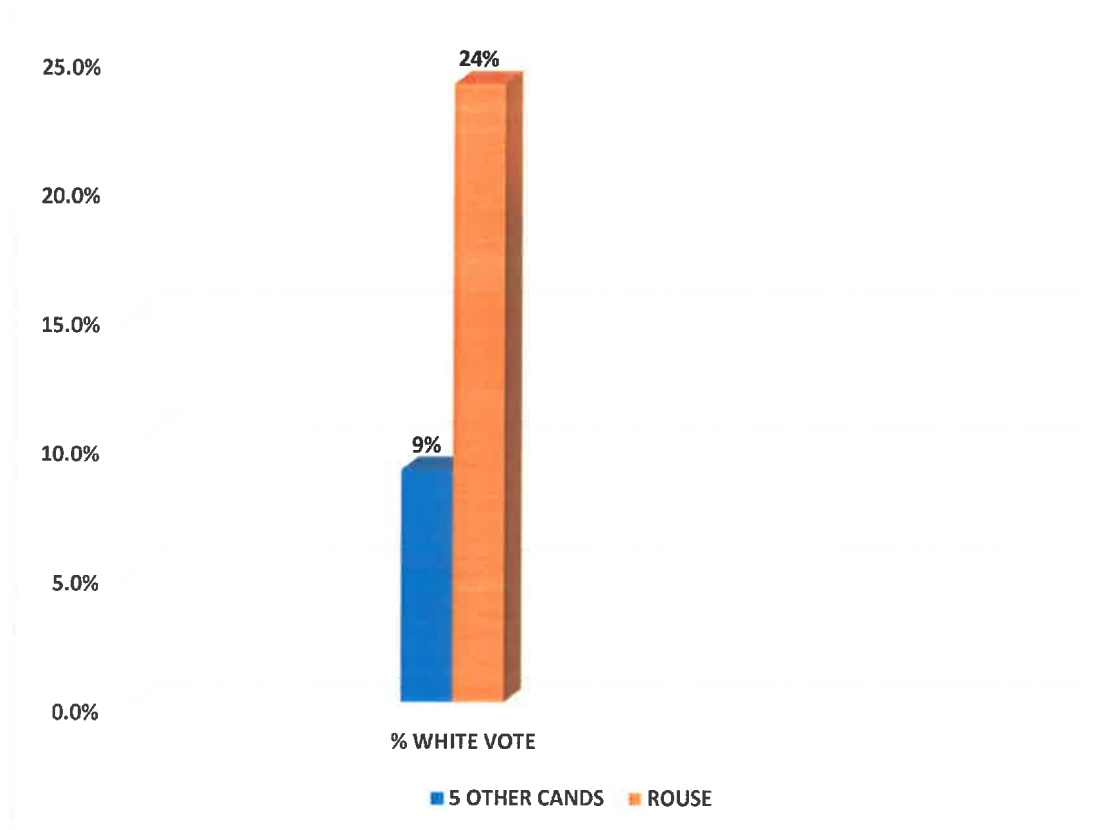


Table 11 compares the white vote for Wooten with the white vote for other black candidates for district seats (omitting Furman and marginal candidate Burton in 2018 who received negligible white support).⁵⁴ As indicated in Table 10, the white vote for Wooten was higher than any of these other black candidates. Wooten's lead in percentage points ranged from 7.6 percentage points to 46.6 percentage points, and in percent ranged from 18 percent to 1,059 percent. Overall, as indicated in Table 11 and Chart 10, white support for Wooten's candidacy was 28.3 percentage points and 125 percent higher than the average white support of 22.7 percent for the 9 other black candidates.

An examination of contributions by white people and businesses run by white people in Virginia Beach to Rouse and Wooten further documents the special circumstances of their victories in 2018. The most prolific donors to city council elections are real estate developers and managers including, Michael Sifen, who is white, and the companies Armada Hoffer, Breeden, Franklin Johnston (since 2014), Runnymede, all of which are run by white executives. All of these donors gave unusually large contributions to Rouse and Wooten as compared to other black candidates for city council in Virginia Beach. These five contributors were selected for analysis based on their record for giving uniquely large political gifts: each contributed \$1,000 or more to at least ten city council candidates and more than \$50,000 for the seven elections since 2008 or, in the case of Franklin Johnston, more than \$35,000 for the three elections since 2014.⁵⁵

As indicated in Table 12, Summary Table 13, and Chart 11, these white donors contributed primarily to white candidates, whether measured by number of candidates or the dollar amount of contributions. As further indicated in Table 12, Summary Table 13, and Chart 11, only four black candidates between 2008 and 2018 received contributions from these donors, including appointed incumbent Sherrod (who lost in the special election of 2011), elected incumbent Ross-Hammond (who only garnered their support in her reelection bid in 2016, which she lost), challenger Rouse (who won his 2018 at-large election) and challenger Wooten (who won her 2018 Centreville District election). Despite being non-incumbents, Rouse and Wooten garnered 72 percent of the total dollar amount contributed to black candidates from 2008 to 2018, as indicated in Summary Table 13 and Chart 12.

⁵⁴ Burton withdrew from the race but his name remained on the ballot.

⁵⁵ In recent litigation challenging at-large elections in the 23rd Judicial District in Louisiana, I also used contribution data to establish the special circumstances regarding the election of a black candidate during the pendency of the lawsuit. *Terrebonne Parish NAACP v. Jindal*, 274 F. Supp. 3d 395 (M.D. La. 2017). The addition of the very few other contributors coming close to these benchmarks would not change the results of the analysis.

TABLE 11 WHITE VOTE FOR CENTERVILLE CITY COUNCIL CANDIDATE WOOTEN IN 2018 COMPARED TO WHITE VOTE FOR OTHER BLACK CANDIDATES OF BLACK VOTER CHOICE FOR DISTRICT SEATS, VIRGINIA BEACH, 2008-2018			
CANDIDATE	% OF WHITE VOTERS FOR CANDIDATE	WOOTEN: PERCENTAGE POINT DIFFERENCE WITH CANDIDATE	WOOTEN: PERCENT DIFFERENCE WITH CANDIDATE
Wooten 2018	51%	NA	NA
Wray 2018	43.4%	+ 7.6 Percentage Points	+18 Percent
Ross-Hammond 2016	29.3%	+21.7 Percentage Points	+73 Percent
Cabiness 2014	4.4%	+ 46.6 Percentage Points	+1,059 Percent
Burton 2014	18.7%	+32.3 Percentage Points	+173 Percent
Ross-Hammond 2012	16.2%	+34.8 Percentage Points	+215 Percent
Smith 2012	24.2%	+26.8 Percentage Points	+112 Percent
Bullock 2010	33.0%	+18.0 Percentage Points	+55 Percent
Jackson 2008	19.9%	+31.1 Percent Points	+155 Percent
Flores 2008	15%	+36 Percentage Points	+240 Percent
Average 9 Other Candidates	22.7%	+28.3%	+125%
Source: Dr. Douglas M. Spencer, "Expert Report: Polarized Voting in Virginia Beach," July 15, 2019.			

CHART 10
WHITE VOTE FOR DISTRICT CITY COUNCIL CANDIDATE WOOTEN IN 2018
COMPARED TO AVERAGE WHITE VOTE FOR OTHER BLACK CANDIDATES FOR
DISTRICT SEATS, VIRGINIA BEACH, 2008-2018

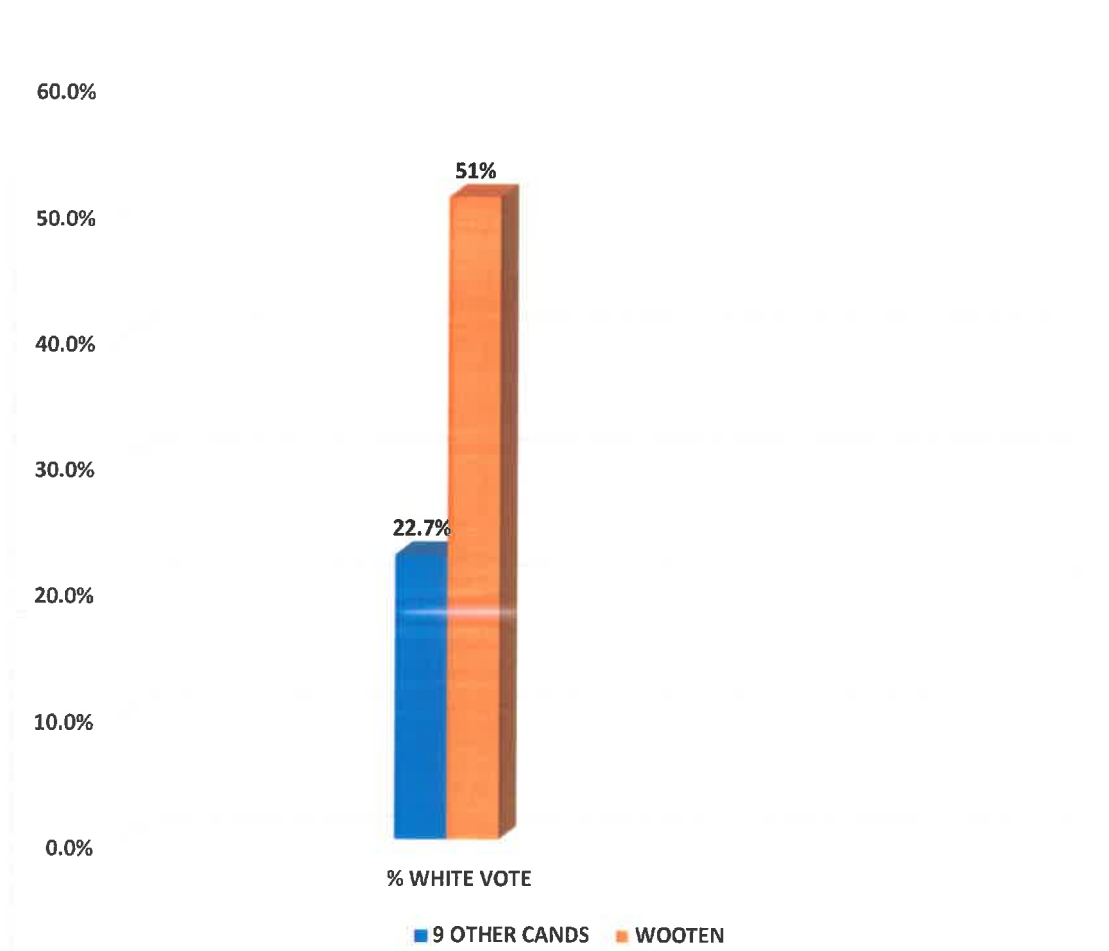


TABLE 12 CONTRIBUTIONS TO VIRGINIA BEACH CITY COUNCIL CANDIDATES, 5 MAJOR WHITE DONORS, 2008-2018, BLACK CANDIDATES IN BOLD						
CANDIDATE & ELECTION CYCLE	ARMADA HOFFLER	BREEDEN	FRANKLIN JOHNSTON	RUNNYMEDE	SIFEN	TOTAL
2017-2018						
Davenport	\$5,000	\$20,000		\$2,500	\$2,500	\$30,000
Dyer					\$2,000	\$2,000
Henley				\$2,500	\$2,000	\$4,500
Jones	\$2,500	\$5,000	\$2,500		\$2,000	\$12,000
Kwasny		\$1,500				\$1,500
Martin				\$1,500		\$1,500
Oliver		\$5,000	\$3,500	\$1,500	\$2,500	\$12,500
Uhrin	\$2,000				\$5,000	\$7,000
Wood	\$2,500	\$5,000	\$5,000		\$2,000	\$14,500
Rouse	\$2,500	\$2,500	\$3,500	\$1,500	\$2,000	\$12,000
Wooten	\$1,000	\$10,000	\$5,000	\$1,500	\$7,000	\$24,500
2015-2016						
Kane	\$1,000	\$2,500		\$500	\$1,500	\$5,500
Ross-Hammond	\$3,500	\$1,000		\$2,000	\$1,500	\$8,000
Sessoms	\$5,000	\$10,000	\$2,500	\$10,000	\$10,000	\$37,500
Wilson	\$1,000	\$2,500	\$4,000	\$500	\$2,500	\$10,500
2013-2014						
Davenport			\$2,000			\$2,000
Davis		\$2,500				\$2,500
Henley	\$1,000					\$1,000
Kane	\$2,000	\$2,500	\$1,000		\$1,000	\$6,500
Martin		\$2,850	\$1,000		\$3,000	\$6,850
Sessoms	\$5,000	\$5,000	\$5,000	\$5,000	\$20,000	\$40,000
Uhrin		\$2,500		\$1,000		\$3,500
2012						
Dale	\$3,000	\$5,000			\$1,000	\$9,000
Davis	\$4,000	\$5,000		\$900	\$1,000	\$10,900
Sessoms		\$10,000		\$5,000	\$6,000	\$21,000
Wilson	\$2,000	\$5,000		\$500	\$1,000	\$8,500

TABLE 12, CONTINUED						
CONTRIBUTIONS TO VIRGINIA BEACH CITY COUNCIL CANDIDATES, 5 MAJOR WHITE DONORS, 2008-2018, BLACK CANDIDATES IN BOLD						
ELECTION CYCLE & CANDIDATE	ARMADA HOFFLER	BREEDEN*	FRANKLIN JOHNSTON	RUNNYMEDE	SIFEN	TOTAL
<i>2011 Special</i>						
Sherrod		\$5,000		\$1,000		\$6,000
Sessoms					\$10,000	\$10,000
<i>2009-2010</i>						
Belitto	\$1,000	\$1,000		\$1,000		\$3,000
DeSteph		\$1,000			\$1,000	\$2,000
Henley				\$500	\$1,000	\$1,500
Jones		\$1,000			\$1,000	\$2,000
Redmond	\$2,000			\$500	\$1,000	\$3,500
Sessoms	\$5,000			\$5,000	\$5,000	\$15,000
Uhrin				\$1,000		\$1,000
Wilson		\$1,000			\$2,000	\$3,000
Wood	\$2,500	\$1,000		\$1,000	\$1,000	\$5,500
<i>2007-2008</i>						
Davis		\$1,000		\$500	\$1,500	\$3,000
Diezel				\$500	\$1,000	\$1,500
Sessoms				\$1,000	\$11,000	\$12,000
Wilson		\$5,000		\$1,000	\$1,000	\$7,000
Wood		\$500				\$500
* Includes small amounts from founder Raymon W. Breeden and Breeden Investments.						
Source: Virginia Public Access Project, "Money," https://www.vpap.org/money/ .						

TABLE 13 SUMMARY TABLE, CONTRIBUTIONS TO WHITE & BLACK CITY COUNCIL CANDIDATES, 5 MAJOR WHITE DONORS, VIRGINIA BEACH, 2008-2018				
ALL CANDIDATES				
MEASURE	WHITE CANDIDATES	BLACK CANDIDATES	PERCENT WHITE	PERCENT BLACK
# of Candidates With Contributions	18	4	82%	18%
Amount of Contributions	\$321,250	\$50,500	86%	14%
BLACK CANDIDATES ONLY				
	ROSS & WOOTEN	SHERROD & ROSS-HAMMOND	PERCENT ROSS & WOOTEN	PERCENT SHERROD & ROSS- HAMMOND
Amount of Contributions	\$36,500	\$14,000	72%	28%
Source: Table 12.				

CHART 11
PERCENT CONTRIBUTIONS BY 5 MAJOR WHITE CONTRIBUTORS TO
WHITE AND BLACK CITY COUNCIL CANDIDATES, 2008-2018

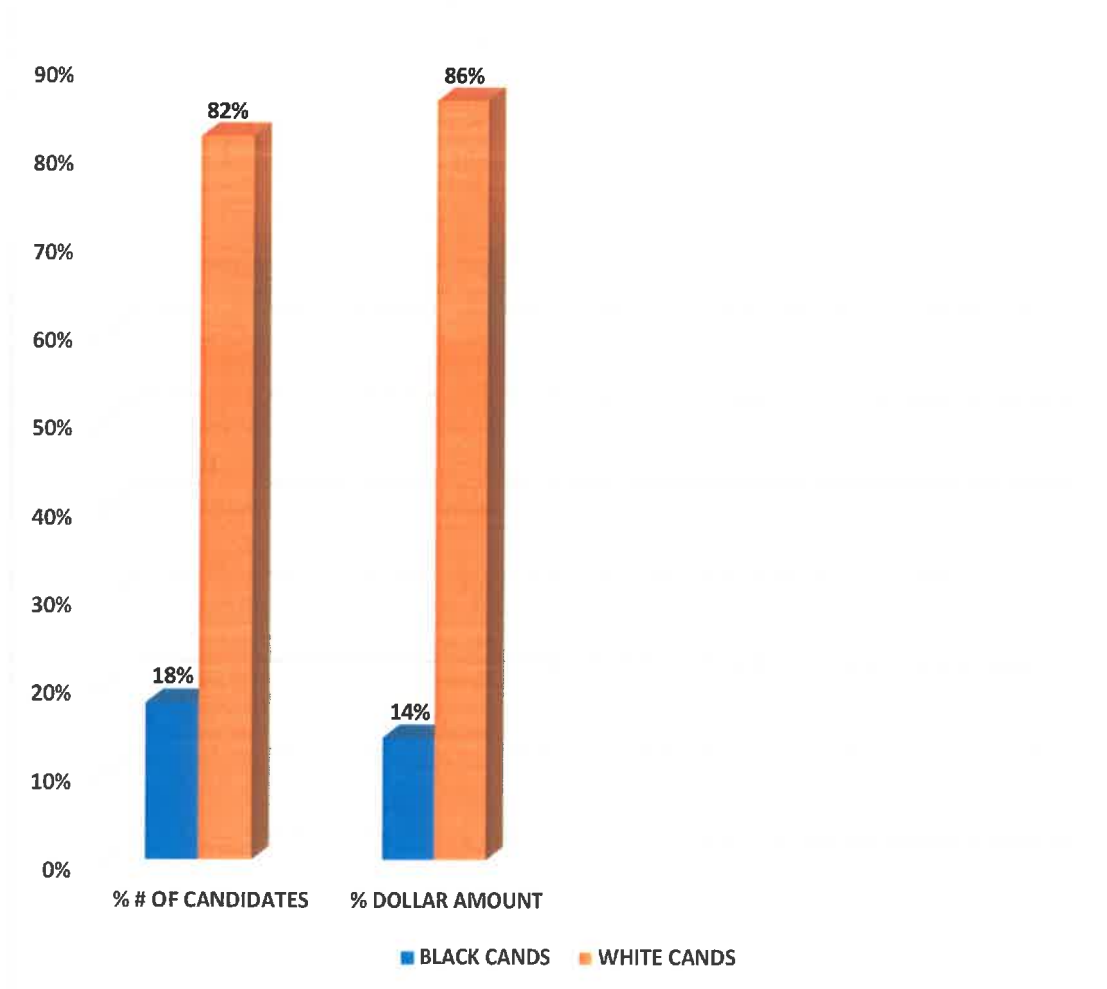
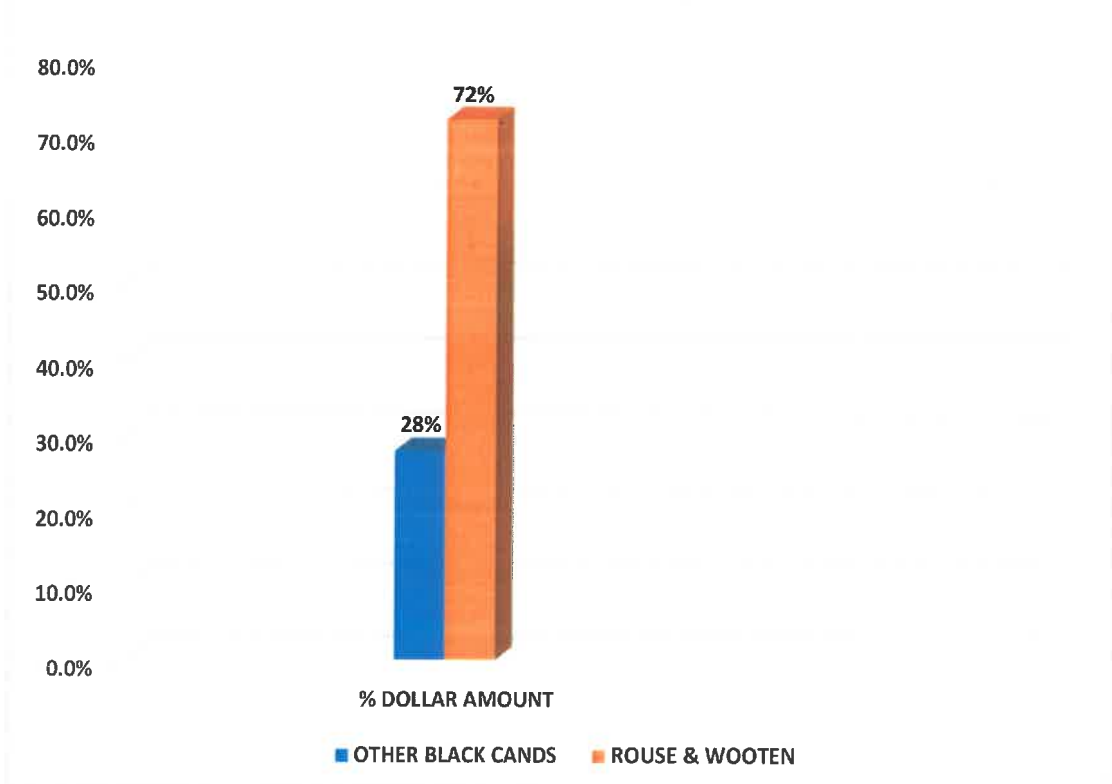


CHART 12
PERCENT DOLLAR AMOUNT CONTRIBUTIONS BY 5 MAJOR WHITE
CONTRIBUTORS TO BLACK CITY COUNCIL CANDIDATES, 2008-2018



An examination of the top donors for candidates Rouse and Wooten in 2018 indicates that their high-level financial support came predominantly from white donors (either individuals or white-run businesses). Table 14 reports the racial identity of the top ten donors to candidate Rouse in 2018, with several tied at \$2,500, which results in 15 total entries instead of ten. For 12 of 15 donors I could ascertain a racial identity. Eleven of these 12 racially identified donors were white. Prior to 2018, none had contributed to a non-incumbent black candidate.

The major exception to Rouse receiving major donations from white individuals and businesses was former NFL player and Hall of Fame member Bruce Smith. Smith, who is black, was seeking city contracts (see Factor 8), and backed fellow former NFL player Rouse. Smith contributed \$16,000 to Rouse's campaign, which is more than triple his largest contribution of \$5,000 to any other Virginia Beach city council candidate from 2008 to 2018.

Table 15 reports the racial identity of the top ten donors to candidate Wooten in 2018. For 8 of 10 donors I could ascertain a racial identity. All of these racially identified donors were white. Again, prior to 2018 none had contributed to a non-incumbent black candidate.

TABLE 14 TOP TEN CONTRIBUTORS TO AT-LARGE CANDIDATE ROUSE, 2018 (9 TIED AT \$2,500)						
		CONTRIBUTIONS TO OTHER BLACK CITY COUNCIL CANDIDATES, 2008-2018				
DONOR & RACE	\$ AMT	WOOTEN 2018	BRIGHT 2018	ROSS-HAMMOND 2016	SHERROD 2011	BULLOCK
Bruce Smith (B)	\$16,000			\$1,500	\$2,500	\$1,000
Marie Finch (UNK)	\$7,500					
Charles Barker Auto (W)	\$7,500					
Steven Johnson (W)	\$7,500					
Franklin Johnston Grp (W)	\$3,500	\$5,000				
Michael Smith (UNK)	\$3,000					
Michael Standing Jr. (W)	\$2,500					
Priority Auto Group (W)	\$2,500					
Frank B. Gigliotti (W)	\$2,500					
Russell Kirk (W)	\$2,500					
Joseph W. Luter IV (W)	\$2,500					
Morchell Pryor (UNK)	\$2,500					
Doug White (W)	\$2,500					
Breeden (W)	\$2,500	\$10,000		\$1,000	\$5,000	
Armada Hoffler (W)	\$2,500	\$1,000		\$3,500	\$7,500	\$1,000
TOTAL	\$67,500	\$16,000		\$6,000	\$15,000	\$1,000
Source: Virginia Public Access Project, "Money," https://www.vpap.org/money/ . Empty cells indicate no contributions to that candidate.						

TABLE 15						
TOP TEN CONTRIBUTORS TO CENTERVILLE CANDIDATE WOOTEN, 2018						
		CONTRIBUTIONS TO OTHER BLACK CITY COUNCIL CANDIDATES, 2008-2018				
DONOR & RACE	\$ AMT	ROUSE 2018	BRIGHT 2018	ROSS-HAMMOND 2016	SHERROD 2011	BULLOCK
Breeden (W)	\$10,000	\$2,500		\$1,000	\$5,000	
Ben Davenport (W)	\$8,000					
Bruce C. Thompson (W)	\$7,500		\$2,500			
Sifen (W)	\$7,000	\$2,000		\$1,500		
Franklin Johnston Grp (W)	\$5,000	\$3,000				
McLesky (W)	\$4,500					
John F. Malbon (W)	\$3,000		\$1,000	\$1,000	\$500	
J3H3 LLC (UNK)	\$2,500					
HHH2 LLC (UNK)	\$2,500					
Dwight Dunton (W)	\$2,000					
TOTAL	\$52,000	\$7,500	\$3,500	\$3,500	\$5,500	
Source: Virginia Public Access Project, "Money," https://www.vpap.org/money/ . Empty cells indicate no contributions to that candidate.						

In addition to struggling to get a foothold in Virginia Beach politics, minorities have fared poorly in gaining election to public office across the state of Virginia in general. Since African American Douglas Wilder won the governorship in 1989, no African American has been elected statewide to a U.S. Senate position in Virginia and only one African American (the current Lieutenant Governor) has been elected to a statewide Virginia office. No other minority group members have been elected to the U.S. Senate or to a statewide position.

Moreover, African Americans and other minorities are substantially underrepresented in the Virginia General Assembly. African Americans comprise 12.5 percent of the State Senate, which amounts to 65 percent of the African American citizen voting age population of 19.3 percent. This disparity is about equal to three State Senate seats. There are no other minority members of the State Senate. The 12.5 percent of all minorities amounts to 37 percent of the minority citizen voting age population of 33.4 percent. This disparity is about equal to about eight State Senate seats.

African Americans comprise 14 percent of the State House of Delegates, equaling 73 percent of the African American citizen voting age population. This disparity is about equal to about five State House seats. All minorities comprise 20 percent of the State House of Delegates, equaling 60 percent of the minority citizen voting age population. This disparity is about equal to about 13 State House seats.⁵⁶

⁵⁶ Virginia Legislative Black Caucus 2019, pp. 4-5, http://www.dbava.com/2019_vlbc/4; websites of Senate and House of Delegates, <https://apps.senate.virginia.gov/Senator/index.php>, <https://viriniageneralassembly.gov/house/members/members.php>.

Factor 8: Whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group.

Several examples illustrate the city of Virginia Beach's lack of responsiveness to the particularized needs of minority residents. Prompted by repeated complaints from former African American NFL player Bruce Smith—who claimed the city had turned him down for multiple projects—Virginia Beach authorized a disparity study of city contracts. The researchers reported their results in January 2019. They computed a “disparity index” that measures differences between the availability for contracts among minority-owned businesses and the actual participation of such businesses in city contracts. They note that in their display of the index that “the line down the center of the graph shows a disparity index level of 100, which indicates parity between participation and availability. A line is also drawn at a disparity index level of 80, because some courts use 80 as the threshold for what indicates a substantial disparity.” A disparity index of 80 means that a business category received \$0.80 “for every dollar that they might be expected to receive based on their availability for the relevant prime contracts and subcontracts that the City awarded during the study period.”⁵⁷

The results of the disparity analysis are reported in Table 16 and Chart 13. As indicated in Table 16 and Chart 13, among minority-owned businesses, firms owned by African Americans were available by far for the largest percentage of city contracts at 8.1 percent. However, such businesses received only 4.5 percent of city contracts, for a disparity index of 56, well below the threshold of 80. Hispanic-owned business had the second highest eligibility at 2.7 percent, but received only 0.5 percent of city contracts, for a disparity index of 20. In contrast, Asian-American owned businesses which had a minimal eligibility percentage of just 0.8 percent, received 5.6 percent of city contracts for a disparity index of some 700. Asian-American owned businesses accounted for just 7 percent of eligible business owned by members of the three minority groups but accounted for 53 percent of the contracts that the city awarded to these minority businesses. The study identified numerous deficiencies in city policies that if rectified could help in achieving greater participation for minority-owned businesses.⁵⁸

Furthermore, the city's hiring practices have not kept pace with demographic change. The city has lagged in the hiring of African American and minority members of the police force. In 2006, the city reached a consent decree with the U.S. Department of Justice aimed at ending a hiring practice that discriminated against African American and Hispanic police-force applicants. According to the decree, “the City has pursued policies and practices that

⁵⁷ WVEC Staff, “NFL Great Bruce Smith Calls for Racial Disparity Study, Offers to Pay for Half of It,” 2WGRZ, 28 November 2018, <https://www.wgrz.com/article/news/local/mycity/virginia-beach/nfl-great-bruce-smith-calls-for-racial-disparity-study-pledges-to-pay-for-half-of-it/291-357057349>; BBC Research & Consulting, “2018 Disparity Study: City of Virginia Beach,” Final Report, January 2019, <https://www.vbgov.com/government/departments/finance/mbc/Documents/2018%20Virginia%20Beach%20Disparity%20Study%20Final%20Report.pdf>, Chapter ES, p 7.

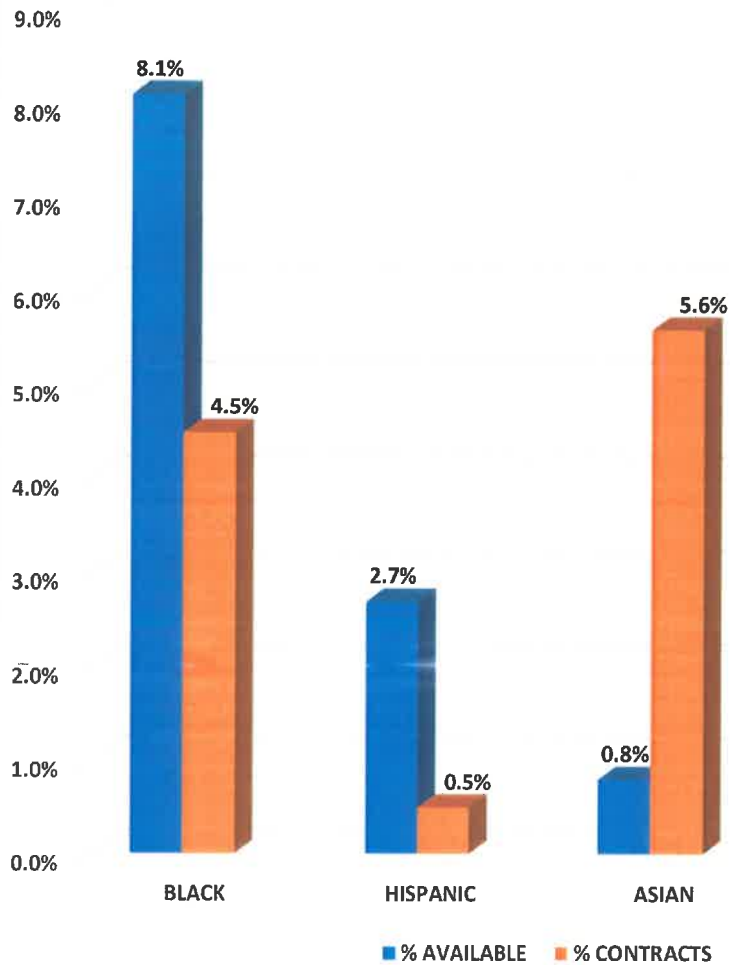
⁵⁸Ibid., “Disparity Study,” pp. 4, 6, 8, 11-14.

discriminate against and deprive or tend to deprive African Americans and Hispanics of employment opportunities because of their race and national origin.” In particular, “the City's use of a mathematics test as a pass/fail screening device in the selection process for the entry-level position of police officer has had a statistically significant disparate impact against African- American and Hispanic applicants” and “has not been shown to be job related for the position in question and consistent with business necessity.” The consent decree charged that the city’s practice had the effect of discriminating against blacks and Latinos but did not charge intentional discrimination.⁵⁹

⁵⁹ U.S. v. Virginia Beach, *Consent Decree*, 3 April 2006, <https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/vabeachcd.pdf>.

TABLE 16 DISPARITIES BY RACE IN CITY CONTRACTS, VIRGINIA BEACH			
MINORITY GROUP	BUSINESS AVAILABILITY FOR CONTRACTS	ACTUAL PARTICIPATION IN CONTRACTS	DISPARITY INDEX
BLACK	8.1%	4.5%	56%
HISPANIC	2.7%	0.5%	19%
ASIAN	0.8%	5.6%	700%
Source: BBC Research & Consulting, "2018 Disparity Study: City of Virginia Beach," Final Report, January 2019, https://www.vbgov.com/government/departments/finance/mbc/Documents/2018%20Virginia%20Beach%20Disparity%20Study%20Final%20Report.pdf , pp. 4, 6, 8.			

CHART 13
DISPARITIES BY RACE IN CITY CONTRACTS, VIRGINIA BEACH



A 2015 study called *Governing: The States and Localities* found that the city was still behind in its hiring of minorities based on 2013 police personnel data. As indicated in Table 17 and Chart 14, the police force representation is 52 percent below the adult population for all minorities, 50 percent below for African Americans, 41 percent below for Hispanics, and 69 percent below for Asians.⁶⁰

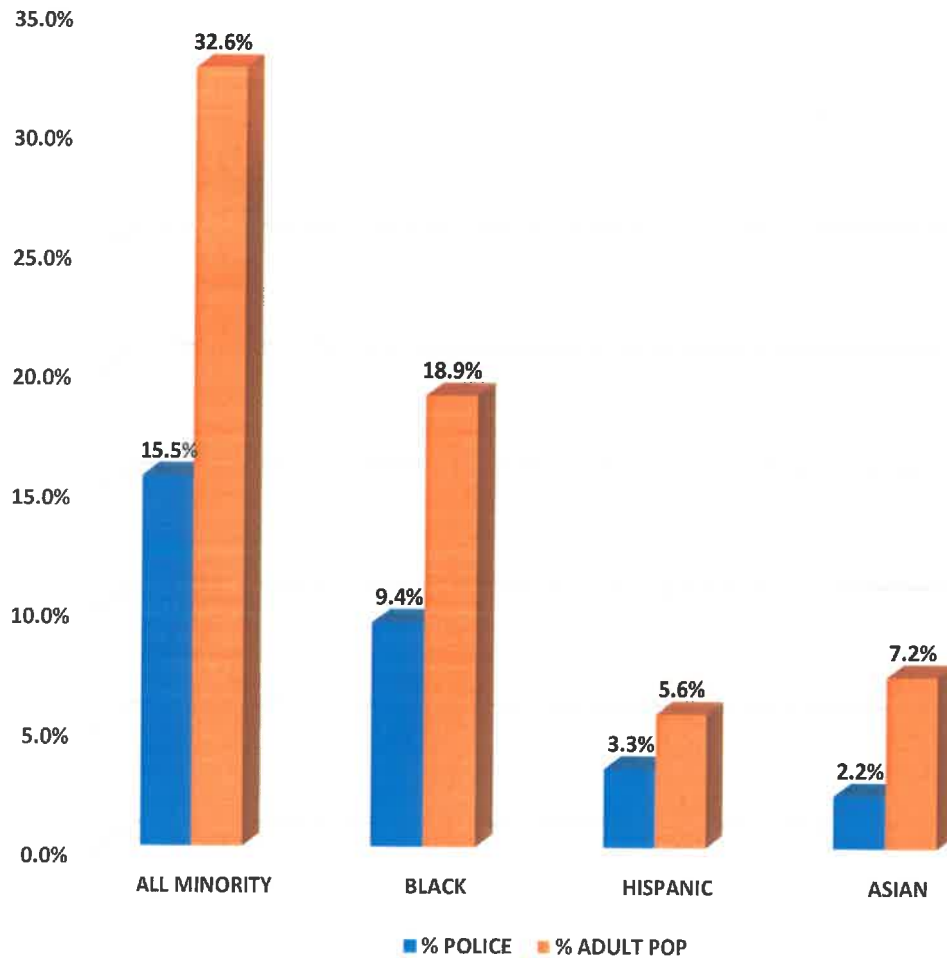
Virginia Beach has also lagged in the hiring of minority teachers. A 2011 analysis by the *Virginian-Pilot* “of federal employment data and student enrollment statistics shows the Beach employs one white classroom teacher for every nine white students but only one minority teacher for every 43 minority students. The district has only one black male principal. Of more than 2,100 grade school teachers, just 16 are black men. Fewer than one in five top administrators are nonwhite.” As compared to neighboring jurisdictions, the study found that “the racial imbalance is most pronounced in Virginia Beach, where 85 percent of public school teachers are white and close to half of students are not, statistics show.”⁶¹

⁶⁰ “Diversity on the Force: Where Police Don’t Mirror Communities,” *Governing*, September 2015, p. 12, <https://media.governing.com/documents/policediversityreport.pdf>.

⁶¹ Mike Hixenbaugh, “Teacher-Student Racial Imbalance Most Pronounced in Va Beach,” *Virginian-Pilot*, 17 September 2011, https://pilotonline.com/news/local/education/article_99d4e10f-7582-5625-b2c5-549983e5f028.html.

TABLE 17 COMPARISON OF PERCENT OF MINORITIES ON BEACH POLICE FORCE COMPARED TO PERCENT IN ADULT POPULATION, VIRGINIA BEACH				
	% POLICE FORCE	% ADULT POPULATION	PERCENTAGE POINT DIFFERENCE	PERCENT DIFFERENCE
MINORITY GROUP				
ALL	15.5%	32.6%	-17.1 Percentage Points	52 Percent Lower
BLACK	9.4%	18.9%	-9.5 Percentage Points	50 Percent Lower
HISPANIC	3.3%	5.6%	-2.3 Percentage Points	41 Percent Lower
ASIAN	2.2%	7.2%	-5 Percentage Points	69 Percent Lower
Source: "Diversity on the Force: Where Police Don't Mirror Communities," <i>Governing</i> , September 2015, p. 12, https://media.governing.com/documents/policediversityreport.pdf ; U.S. of Population, 2010 Complete Enumeration.				

CHART 14
COMPARISON OF PERCENT OF MINORITIES ON BEACH POLICE FORCE
COMPARED TO PERCENT IN ADULT POPULATION, VIRGINIA BEACH



Factor 9: Whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice, or procedure is tenuous.

The policy underlying the current at-large election system for city council in Virginia Beach is tenuous at best. As indicated in Table 3 above, six of 12 other large independent cities utilize for their city council elections either a straight district system or a mixed at-large district system, with the majority of members elected from districts. Even among other large cities using an at-large system, none share Virginia Beach's problematic combination of at-large elections, designated or numbered post for the majority of positions, and staggered terms. Such provisions as staggered terms or numbered posts, "while not in themselves improper nor invidious... can enhance the opportunities for racial discriminations" in an at-large election system.⁶²

⁶² Sen. Rep. at 22.

CONCLUSION

In sum, this analysis shows that the totality of circumstances in Virginia Beach undermines the ability of minorities in the city to participate fully in the political process and elect candidates of their choice. All nine of the Senate Factors are present in Virginia Beach.

There is a long and ongoing history of discrimination in Virginia and in the City of Virginia Beach. Voting in Virginia Beach is polarized along racial lines. The city uses an at-large system for electing members of the city council that has features such as numbered posts, staggered terms, and large districts that disproportionately burden minority voters. White candidates for city council typically align with other white candidates in providing donations for campaigns. Minorities in Virginia Beach, especially African Americans and Hispanics and to a lesser extent Asians bear the effects of historical and ongoing discrimination in their diminished socio-economic standing relative to whites. Political campaigns in Virginia and Virginia Beach have been marked by racial appeals. Minorities have not fared well in election to public office in Virginia Beach, including on the city council, and no African American member of the city council has ever stood the test of reelection. The unprecedented election of two African Americans to the city council in 2018 reflects the special circumstances of the pending lawsuit. In important ways, Virginia Beach has not been responsive to the particularized needs of minorities, and the justification for the present system of electing city council members is tenuous at best.

August 26, 2019

United States District Court for the Eastern District of Virginia

Holloway v. City of Virginia Beach

Case No.: 2:18-cv-00069

**Rebuttal Report of Dr. Allan J. Lichtman: Totality of
Circumstances**

**Distinguished Professor of History
American University
Washington, DC**



Allan J. Lichtman

EXHIBIT

2

Planet Depos, LLC

I. STATEMENT OF PURPOSE

This report responds to the reports submitted by defendants' experts Dr. Quentin Kidd and Dr. Peter Morrison. As a general matter, nothing presented in either report has prompted me to revise any of the findings and conclusions in my initial expert report of July 15, 2019.

I. Report of Dr. Quentin Kidd

Even taken at face value, which this report cannot, it fails even to address my findings on three of the nine "totality of the circumstances" factors analyzed in my report. These include:

FACTOR 1: The long and ongoing history of discrimination against minorities in Virginia and Virginia Beach.

FACTOR 8: The significant lack of responsiveness on the part of elected officials in Virginia Beach to the particularized needs of the members of the minority group.

FACTOR 9: The tenuous nature of the policy underlying the system for electing city council members in Virginia Beach.

With respect to the remaining two other factors, the Kidd report only considers limited and partial elements of those factors:

FACTOR 5: The extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process.

FACTOR 7: the lagging extent to which members of the minority group have been elected to public office.

The following considers each of the factors addressed or partially addressed in the Kidd Report, which include Factors 2, 3, 4, 5, 6, and 7:

FACTOR 2: The extent to which voting in the elections of the state or political subdivision is racially polarized.

Before delving into the details of the Kidd report, it is important to note that he makes no attempt to refute Dr. Spencer's findings, summarized in Table 4 of my initial report, that voting was polarized along racial lines in all four of the recent presidential and congressional elections with black versus white candidates within the precincts of Virginia Beach. This polarization applied to all minority voters. In all four elections, the minority support for black candidates averaged about 90 percent or more, showing an extreme degree of cohesion. In three of the four

elections, white voters in contrast voted substantially against these candidates. Only in the 2008 presidential primary, which black candidate Obama overwhelming won in Virginia, did a majority of white voters back the black candidate, but at much lower levels than did minority voters. Although overlooked in the Kidd Report, these findings are certainly relevant to assessing the question posed by the factor as to whether voting is racially polarized in Virginia Beach.

With respect to city council elections, the analysis in the Kidd's report is premised on a false proposition that minority voters are cohesive only when they provide majority support for a particular candidate. That is not true for city council elections in Virginia Beach involving black candidates. Many of these elections involve multiple candidacies, with no majority-vote requirement, and where votes are spread out among an array of candidates. Some of these elections (at-large) also involve multiple seat, multiple candidate contests. The standard procedure in these situations is to assess whether minority voters vote to make a black candidate their candidate of choice and then whether such a candidate who would have been elected with minority votes is defeated by white bloc voting. In fact, the Kidd report implicitly recognizes the appropriateness of this standard by including Rouse among the candidates receiving cohesive black support in his Table 2. For the continuing discussion of this factor, I focus on black voters as the predominant minority group in Virginia Beach. In addition, all minority candidates from 2008 to 2018 are black.

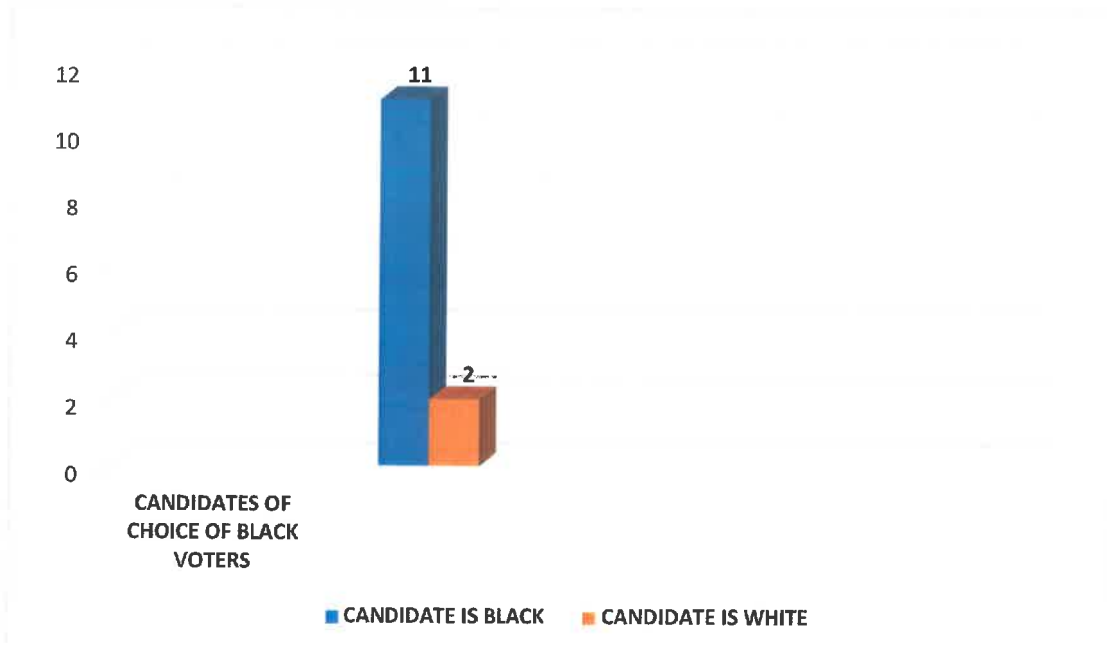
Rouse was the candidate of choice among black voters but received well less than 50 percent support. By adding in Rouse to his roster of minority candidates of choice, Kidd increases the number of percentage of candidates who receive cohesive black voter support and also won election to the city council. Kidd cannot have it both ways. He cannot include Rouse in Table 2 without including other black candidates who were the candidates of choice of black voters (although short of 50 percent support) but who, unlike Rouse, lost their elections.

Table 3 of my initial report, which is unrefuted and not even addressed in the Kidd report, provides this proper analysis. As indicated in Table R1, which presents candidates of choice from Table 3, and Chart R1, in contests for 11 of 14 positions, black voters supported a black candidate as their candidate of choice. For purposes of this analysis it is correct to say that they favored a white candidate of choice over a black candidate only in two elections for 13 positions. In the 2018 in Princess Anne, black candidate Burton had withdrawn from the race, but his name remained on the ballot. So, the ratio in which non-withdrawn candidates were on the ballot, the ratio is 11 to 2 and indicated in Chart R1. Of those two outlier cases, one involved a white candidate as the second choice in the two-seat at-large election in 2018.

In 10 of 11 elections where black voters preferred a black candidate, voting was polarized along racial lines, with white voters preferring a white candidate. For 8 of these 10 ten candidates in polarized elections, the candidate of choice of black voters lost. Prior to 2018, the only winning exception was Ross-Hammond in 2012, in the Kempsville District. However, white bloc voting defeated Ross-Hammond in her bid for reelection in 2016, a rare defeat for an incumbent. In addition, in elections for all but one position, the candidate of choice of white voters prevailed, demonstrating the extent to which white voters control elections in Virginia Beach.

TABLE R1 POLARIZED VOTING IN VIRGINIA BEACH CITY COUNCIL ELECTIONS WITH BLACK CANDIDATES, 2008-2018				
YEAR, SEAT	BLACK CANDIDATE(S)	CANDIDATE OF CHOICE OF BLACK VOTERS	CANDIDATE OF CHOICE OF WHITE VOTERS	WINNER
2008 At-large	Allen	Allen	Wilson (W)	Wilson (W)
2008 Kempsville	Jackson Flores	Flores	Diezel (W)	Diezel (W)
2010 At-large (2 Elected)	Jackson Cabiness	Jackson Cabiness	Belitto (W) DeSteph (W)	Bellitto (W) DeSteph (W)
2010 Princess Anne	Bullock	Bullock	Henley (W)	Henley (W)
2011 At-large	Sherrod	Sherrod	Moss (W)	Moss (W)
2012 Kempsville	Ross-Hammond Smith	Ross-Hammond	Dale (W) * Weeks (W) *	Ross-Hammond
2014 Princess Anne	Burton	Henley (W)	Henley (W)	Henley (W)
2014 Rose Hall	Cabiness	Cabiness	Kane (W)	Kane (W)
2016 Kempsville	Ross-Hammond	Ross-Hammond	Abbot (W)	Abbot (W)
2018 At-large (2 elected)	Rouse Bright	Rouse White (W)	Moss (W) Oliver (W)	Moss (W) Rouse (B)
2018 Centerville	Wooten Wray	Wooten	Wooten	Wooten
2018 Princess Anne	Burton *	Henley (W)	Henley (W)	Henley (W)
* Burton was a token candidate who won just 2.9 percent of the vote against incumbent Henley in the 2018 election for the Princess Anne District. Burton withdrew, but his name remained on the ballot.				
Source: Dr. Douglas M. Spencer, "Expert Report: Polarized Voting in Virginia Beach, 18 October 2018 with update for 2018, 10 April 2019, pp. 19-24				

CHART R1: CANDIDATES OF CHOICE OF BLACK VOTERS FOR POSITIONS IN ELECTIONS WITH BLACK CANDIDATES, CITY COUNCIL ELECTIONS, VIRGINIA BEACH, 2008-2018



The analysis provided in Table R1 also indicates the need for fundamental revisions of Table 1 and Table 2 of the Kidd report. Before displaying these revisions, it is worth noting that even taking Kidd's Table 1 at face value, it shows that even when black candidates receive upwards of 50 percent support from minority voters (a very high threshold for multi-candidate elections), they are *still* usually defeated by white bloc voting. The count in Kidd Table 1 shows that of the 8 black candidates with the strongest black voter support of upwards of 50 percent of the black vote, 6 of the 8 (75 percent) lost their elections. One of the two winners was the special case of candidate Wooten in 2018, which was discussed in my initial report and which will be addressed again below.

The extreme degree of bloc voting is further demonstrated in a revision of Kidd's Table 1 that looks at the degree of black and white voter support for candidates, all of whom topped 50 percent of the black vote and unquestionably had cohesive black voter support. The results reported in Table R2 and Chart R2 demonstrate that black support for these candidates averaged 81.9 percent, compared to an average white support of 22.0 percent. This amounts to a difference of 59.9 percent, which demonstrates not just racially polarized voting, but extreme racially polarized voting.

Table R3 of this report provides a revision of the Kidd Tables 1 and 2, with the proper criteria of identifying black candidates of choice and determining whether or not they were defeated by white bloc voting. Although Spencer provided sound and unrefuted reasons for not including candidate Furman, to be consistent with the Kidd report, Furman is included in Table R3. As indicated in Table R3, African American voters usually prefer black candidates as their candidates of choice 11 to 8.

But in reality, the ratio is much higher than that. Candidate Wray was the second black candidate in the single-seat Centerville election in 2018, in which black candidate Wooten was the candidate of choice of black voters. So, by definition, Wray could not have been the black candidate of choice of black voters. Similarly, candidate Smith was the second black candidate in the single-seat Kempsville election in 2012, in which black candidate Ross-Hammond was the candidate of choice of black voters. So, by definition, Smith could not have been the candidate of choice of black voters. Finally, black candidate Jackson was the second candidate of choice in the single-seat Kempsville election in 2008, in which black candidate Flores was the black candidate of choice. So, by definition Jackson could not have been the candidate of choice of black voters.

TABLE R2: RACIAL POLARIZATION IN VIRGINIA BEACH CITY COUNCIL ELECTIONS FROM KIDD TABLE 1, BLACK CANDIDATES WITH 50%+ OF THE BLACK VOTE, DESCENDING ORDER OF BLACK VOTER SUPPORT				
Candidate	% Of Black Vote	% of White Vote	Difference	Won or Lost
Wooten 2018	95.7%	51.0%	+44.7%	Won
Bullock 2010	89.2%	32.9%	+56.3%	Lost
Sherrod 2011	87.0%	11.5%	+75.5%	Lost
Ross-Hammond 2012	86.9%	17.0%	+69.9%	Won
Allen 2008	86.3%	19.9%	+66.4%	Lost
Jackson 2010	85.6%*	7.5%	+78.1%	Lost
Ross-Hammond 2016	76.8%	30.1%	+46.7%	Lost
Cabiness 2014	51.7%	6.4%	+45.3%	Lost
Mean all Candidates	81.9%	22.0%	59.9%	
* The Kidd report incorrectly lists the black % as 86.5%.				
Sources: Kidd Report, Table 1, Spencer Initial Report, pp. 14-29. To be consistent with Kidd Table 1, this Table uses Ecological Inference (EI) estimates, but the Ecological Regression (ER) estimates would yield essentially the same results.				

CHART R2: RACIAL POLARIZATION IN ELECTIONS FOR BLACK CITY COUNCIL CANDIDATES OF CHOICE WITH MORE THAN 50% BLACK VOTER SUPPORT (DESCENDING ORDER OF BLACK SUPPORT)

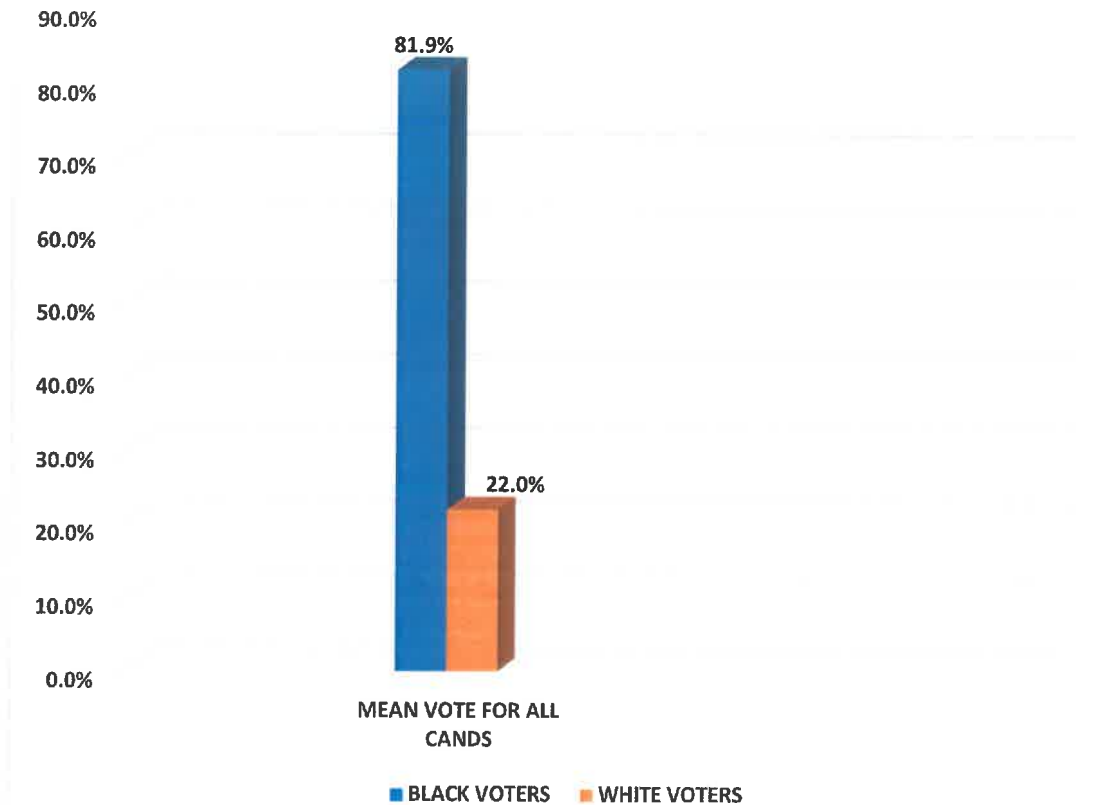


TABLE R3 AFRICAN AMERICAN CITY COUNCIL CANDIDATES IN VIRGINIA BEACH, 2008 TO 2018, REVISION OF KIDD TABLES 1 AND 2			
Black Candidate of Choice of Black Voters, Would Have Won With Black Votes	Outcome	Not Candidate of Choice of Black Voters	Outcome
Wooten 2018	Won	Wray 2018	Lost
Rouse 2018	Won	Bright 2018	Lost
Ross-Hammond 2016	Lost	Furman 2016	Lost
Cabiness 2014	Lost	Furman 2014	Lost
Ross-Hammond 2012	Won	Burton 2014	Lost
Sherrod 2011	Lost	Smith 2012	Lost
Jackson 2010 *	Lost	Furman 2014	Lost
Cabiness 2010 *	Lost	Jackson 2008	Lost
Bullock 2010	Lost		
Allen 2008	Lost		
Flores 2008	Lost		
* These were the first and second choices of black candidates in a two-seat at-large election.			

Eliminating these three candidacies, the ratio of black candidates of choice of black voters to black candidates who were not the black candidates of choice of black voters rises to 11 to 5 (69 percent). Of those 5 black candidates, 3 involved perennial candidate Furman. As further indicated in Table R3 and Chart R3, 8 of these 11 black candidates of choice of black voters lost their elections. Two of the three victors represented the special cases of Rouse and Wooten in 2018. Absent these special cases, only one black candidate of choice, Ross-Hammond in 2012, won a city council seat. Although an incumbent, Ross-Hammond then lost her seat in the next election of 2016.

Factor 3: the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group.

In its consideration of Factor 3, the Kidd report ignores the most distinctive discriminatory feature of city council elections in Virginia Beach that distinguishes it from election procedures in all other large cities in Virginia. That feature, which I examine in my initial report, is the use of designated or numbered posts, elected at-large for the election of 7 of 11 seats on the city council of Virginia Beach. This provision prohibits minority voters from single-shot voting for a preferred candidate or concentrating their votes on a small number of candidates. Such an anti-single shot provision is explicitly named in the Senate Report's description of the factor and the dilutive impact of at-large elections is further enhanced in Virginia Beach through the use of staggered elections for non-designated posts.

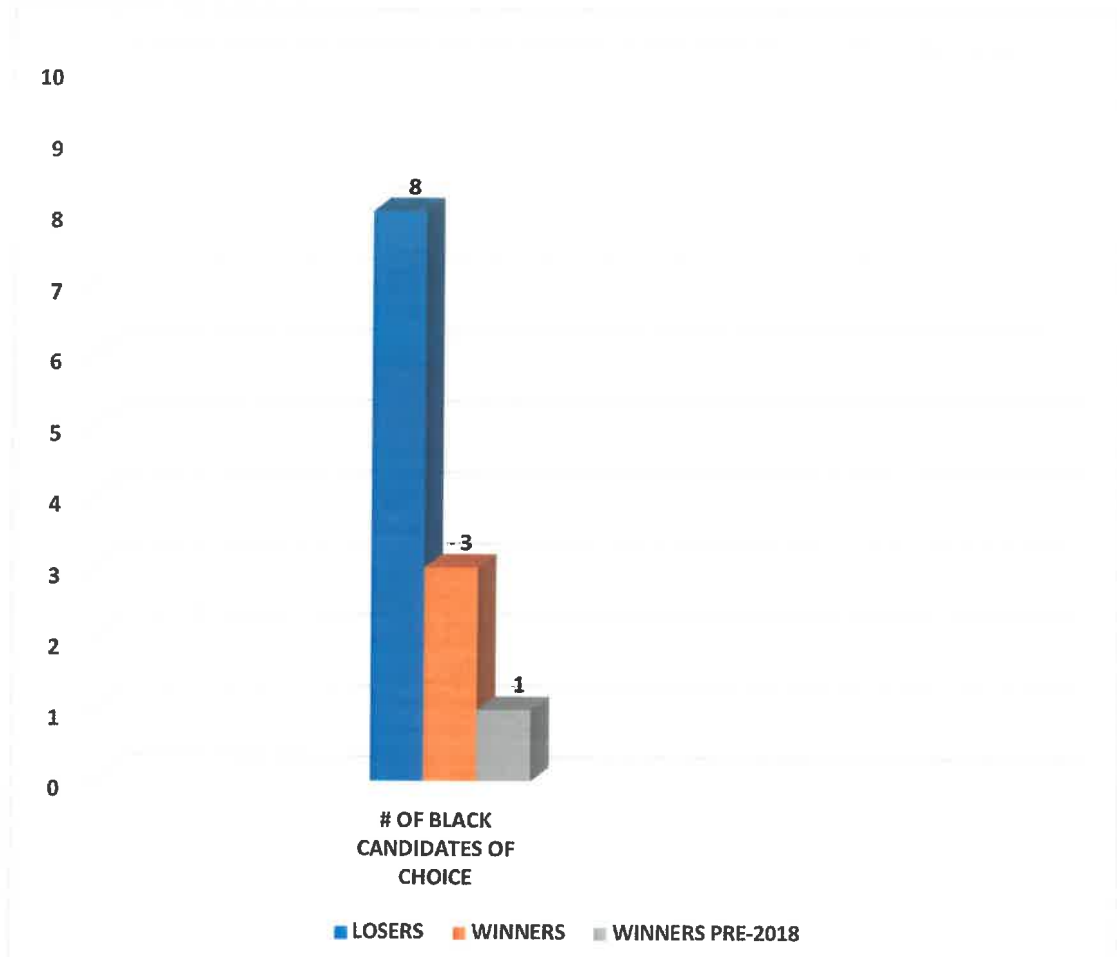
The failure of the Kidd report to consider this discriminatory feature is especially notable because it has been the subject of considerable local public commentary, especially in recent years.

On July 17, 2012, in an op ed entitled "It's Time to Ditch Beach's Baffling Election System," *Virginian-Pilot* columnist Roger Chesley wrote, "The Beach has a hybrid system possibly unmatched across the country. Voters select three at-large members and the mayor. For the remaining seven district seats, voters citywide pick each member." Moreover, "*Spokespersons with the National League of Cities and U.S. Conference of Mayors told me they're unaware of any city with a structure similar to the one in Virginia Beach.*"¹ (emphasis added).

On October 1, 2018 Virginia Beach city council candidate David Nygaard wrote, "We are the only city in America where we vote for everyone's representative, whether we live there or not. We were supposed to change this system when we were first incorporated as a city in 1963

¹ Roger Chesley, "It's Time to Ditch Beach's Baffling Election System," *Virginian-Pilot*, 17 July 2012, https://pilotonline.com/news/local/columnist/roger-chesley/article_01fdf121-21f0-5664-be4d-a0b6a6f18f7a.html.

**CHART R3: VICTORIES AND DEFEATS FOR BLACK CITY COUNCIL CANDIDATES
OF CHOICE OF BLACK VOTERS, VIRGINIA BEACH, 2008-2018**



and given seven years to accomplish it. 55 years later, nothing has changed and the flawed system remains in place.”²

On October 2, 2018, an article in the *Virginian-Pilot* voted, “Since the 1960s, Virginia Beach has used an unusual hybrid approach: *It’s the region’s only locality in which candidates represent specific residential districts but are elected by voters from the entire city.*” (emphasis added).³

On October 5, 2018 Roger Chesley reiterated his critique of the hybrid system, writing that, “Strange hybrid system for Beach council should go the way of the dodo.”⁴

On December 19, 2018 an article in the *Virginian-Pilot* noted, “Virginia Beach uses a wonky hybrid election system where seven seats on the council require candidates to live in a specific district, but they’re still elected by the entire city. It’s a blend of the at-large and ward approaches, and there is a renewed effort to change this.”⁵

On April 5, 2019 an editorial in the Princess Anne Independent News said, “The city’s hybrid system of at-large seats and district seats can seem confusing, and it is not universally beloved, but this is the system by which we pick our local leaders.”⁶

Dr. Kidd is a professor at the local Christopher Newport University, which is less than 50 miles from Virginia Beach. He is a specialist in Virginia politics and Director of the Judy Ford Wason Center for Public Policy which “was established in 2007 to provide unbiased and non-partisan scientific research about public policy issues facing Virginia.”⁷ He could not plausibly have been unaware of the controversy over Virginia Beach’s unusual hybrid system for electing members of its city council. Yet his report is silent on this crucial issue.

Dr. Kidd does address other aspects of features of Virginia Beach’s system for electing city council members that I identified in my report as also demonstrating the presence of Factor 3. First, there is the large geographic space of some 249 square miles across which candidates must campaign. Kidd says this “district size is not out of the ordinary” because it “does not even rank as the largest, with Chesapeake and Roanoke coming in larger according to Lichtman’s Table 3.”

² David Nygaard, “Virginia Beach Needs a New Voting System for City Council,” *Outwire757*, 1 October 2018, <https://outwire757.com/commentary-virginia-beach-needs-a-new-voting-system-for-city-council/>.

³ Stacy Parker, “2 Virginia Beach City Council Members Want to Change the City’s Election System,” *Virginian-Pilot*, 2 October 2018, https://www.pilotonline.com/government/local/article_5aea8b7a-c591-11e8-b572-3b015d1704d3.html.

⁴ Roger Chesley, “Strange Hybrid System for Beach Council Should Go the Way of the Dodo,” *Virginian-Pilot*, 5 October 2018, https://pilotonline.com/news/local/columnist/roger-chesley/article_91e44f38-c804-11e8-a08b-9f61debbbc67d.html.

⁵ Peter Contu, “If Virginia Beach City Council Used a Ward Election System, Would Results Change? Probably,” *Virginian-Pilot*, 19 December 2018, https://pilotonline.com/news/government/local/article_90b96212-f016-11e8-ab72-23e06bcb9e2f.html.

⁶ “The Virginia Beach Public Servant’s Guide to Where You Live,” *Princess Anne Independent News*, 5 April 2019, <http://princessanneindy.com/2019/04/05/editorial-residency/>.

⁷ Judy Ford Wason Center for Public Policy, “About the Center,” <https://cnu.edu/wasoncenter/about/>.

(p. 31). The third largest district or jurisdiction size among the 13 most comparative cities certainly would rank as unusual by any standard definition of the term. Moreover, Virginia Beach at 250.6 square miles is essentially tied with Roanoke for second geographically among the 13 cities and its order of magnitude is larger than the 10 other comparative cities. As noted in my initial report, “The ratio of the square mileage for the place of election in Virginia Beach as compared to these other cities ranges from 2.5 to 1 to 37.7 to 1.” The mean difference is 15.2 to 1.

Kidd further notes that if “Virginia Beach were to adopt the 10 SMD model proposed by plaintiffs, the mean district sizes would be 24.9 square miles, making them larger than 7 of the cities shown on Table 3 of Lichtman's report.” (p. 31). He fails to note, however, that such a change would reduce the area for electoral city council competition in Virginia Beach by 90 percent, a most significant reform for minority voters. He also notes that 7 cities would still have larger districts. But that would place Virginia Beach close to the middle of the distribution. Moreover, the average ratio of the 24.9 square miles district to the size of the other 7 smaller districts is just 2 to 1, whereas the current ratio of Virginia Beach to these 7 cities is 19.6 to 1.

The third feature of city council elections in Virginia Beach that demonstrates the presence of Factor 3 is the large population of the city council district --the entire city-- with a population of 450,000 persons. This population under at-large elections makes it difficult for minority candidates to campaign door-to-door as opposed to running a much more expensive advertising campaign. Kidd does not dispute the finding of my initial report that Virginia Beach ranks *first* among the 13 cities in the population size of the district or jurisdiction in which candidates must run. As noted in my initial report, “The ratio of the population for the place of election in Virginia Beach as compared to these other cities ranges from 1.9 to 1 to 21.3 to 1.”

Dr. Kidd notes only that “The major distinguishing feature between Virginia Beach and the rest of the cities that Lichtman compares it with is its population, which is 90% larger than the next two largest cities (Norfolk and Chesapeake), and almost 9 times larger than the two smallest cities on the list (Harrisonburg and Leesburg).” (p. 31). Of course, it is not just the large population of Virginia Beach that makes it unique among other cities, but also the fact that all city council candidates must run citywide. Dr. Kidd notes the number of square miles in plaintiffs’ 10 member proposed district plan but does not reference population. The plan would comparably reduce the population for running for city council by 90 percent from 450,000 to 45,000, which would move it from first among the 13 cities down to 11th place, with just two cities requiring city council candidates to run in districts or jurisdictions with larger populations.

Table R4 below compares for both geographic size and population the ratio of the district (entire city) used to elect members of the city council, with the mean for the other 12 cities with a population of 50,000 or more. As indicated in Table R4 with respect to size, Virginia Beach elections currently take place across a geographic area that is more than three times the size of the average for other cities. However, under plaintiffs’ Illustrative Plan, Virginia Beach’s area would be only about a third the size of the average for other cities. As also indicated in Table R4 with respect to population, Virginia Beach elections currently take place with a population that is more than five times the size of the average for other cities. However, under plaintiffs’ Illustrative Plan, Virginia Beach’s districts would be only about half the population of the average for other cities.

TABLE R4 VIRGINIA CITIES WITH MORE THAN 50,000 POPULATION, AVERAGE SIZE AND POPULATION OF PLACE OF ELECTION FOR CITY COUNCIL, CURRENT SYSTEM VERSUS PLAINTIFFS' ILLUSTRATIVE PLAN			
	Virginia Beach	Mean Other Cities	Ratio VA Beach to Others
Current Square Miles for City Council Election	249	73.1	3.4 to 1
Square Miles Plaintiff Plan	24.9	73.1	.34 to 1
Current Population for City Council Election	450,159	87,336	5.2 to 1
Population Plaintiff Plan	45,016	87,336	.52 to 1
Source: Tables 3-4, Lichtman, Initial Report, July 15, 2019.			

In sum, after considering the Kidd Report on Factor 3, the following remains unrefuted:

1. Unique among comparable cities, Virginia Beach uniquely maintains numbered or designated posts for the election of the majority of city council members, a well-known device that often enhances the discriminatory nature of an at-large election system.
2. Virginia Beach is essentially tied for second among 13 comparable cities in the size of the land mass that candidates must traverse to win election to a city council position.
3. Adoption of plaintiffs' proposed illustrative districting plan would reduce this land area by 90 percent placing Virginia Beach just one city above the middle of the distribution.
4. Virginia Beach ranks first among comparable cities in population in the district or jurisdiction in which candidates for city council must compete.
5. Adoption of plaintiffs' proposed illustrative districting plan would reduce this population by 90 percent placing Virginia Beach 11th among 13 cities in the population of city council districts or jurisdictions.

Factor 4: If there is a candidate slating process, whether the members of the minority group have been denied access to that process.

The Kidd report does not dispute that united funding by candidates can be a form of informal slating. He also does not deny or refute the analysis in my initial report which shows that such slating favors white candidates in Virginia Beach City Council elections. Rather, he claims that only contributors to a candidate who are other candidates running in the same election should be counted as part of this informal slating process.

Even assuming that Kidd is correct, which he is not, his Table 11 fundamentally misrepresents intra-election contributions, because it misses many contributing candidates running in the same election as documented in Appendix I, which replicates from the Virginia Beach government the candidates running by year from Virginia Beach. Kidd Table 11 on p. 33 of his report lists 13 intra-election donors. However, he erroneously fails to include almost half of the 25 intra-election donors listed on Table R5. The data reported in Table R4 clearly demonstrates, even under Kidd's standard, informal slating that heavily favors white candidates, even more so than was indicated in my initial analysis. Of city council candidates who garnered contributions from at least two or more intra-election candidates, an indication of slating and not just an individual contribution, seven were white and none were black. The only black candidates to garner any intra-election contributions (one each) were incumbent Ross-Hammond in 2016 and Rouse and Wooten in 2018.⁸

⁸ The Kidd report also incorrectly indicates that Ross-Hammond received \$13,000 from Mayor Sessoms, when, in fact she received \$11,500:

https://www.vpap.org/committees/215566/donor/1925/?start_year=all&end_year=all&contrib_type=all.

TABLE R5 INTRA-ELECTION CONTRIBUTIONS TO CANDIDATES, CITY COUNCIL, VIRGINIA BEACH, 2008-2018		
Candidate	Contributors & Amount	Total
Bellitto (W) 2010	Uhrin \$500	\$500
Dale (W) 2012	Sessoms \$1,000	\$1,000
Davis (W) 2008, 2012	Sessoms, \$500, Wilson \$1,000	\$1,500
Diezel (W) 2008	Wilson \$250	
Henley 2010, 2014, 2018	Davenport, \$9,500, Jones, \$1,000, Uhrin, \$1,500	\$12,000
Kane (W) 2014	Jones, \$4,000, Uhrin \$1,500, Wood, \$350	\$5,850
Martin (W) 2014, 2018	Jones, \$2,000, Uhrin, \$1,000	\$3,000
Moss (W) 2010, 2014, 2018	Jones, \$5,000, Worst, \$250	\$5,250
Redmond (W) 2010	Uhrin, \$8,500	\$8,500
Rouse (B) 2018	Davenport \$1,500	\$1,500
Ross-Hammond (B) 2012, 2016	Sessoms, \$11,500	\$11,500
Uhrin (W) 2010, 2014, 2018	Davenport, \$2,000	\$2,000
Wilson (W) 2008, 2012, 2016	Sessoms, \$1,250, Davis \$1,325	\$2,575
Wood (W) 2010, 2014, 2018	Davenport \$2,000, Uhrin \$1,000, Redmond \$250	\$3,250
Wooten (B) 2018	Davenport \$8,000	\$8,000
Sources: Source: Virginia Beach, Election Information & Results, https://www.vbgov.com/government/departments/voter-registrar/elections/pages/default.aspx ; Virginia Public Access Project, VPAP.org.		

The other problem with Kidd's analysis is that not only are there intra-election contributions to candidates, but also incumbents who may not be running in a particular election are involved in slating. The reason is clear: incumbents, no less than candidates in a particular election, would certainly care about the persons with whom they will be governing in an upcoming session. Most of the non-intra-election contributors in my initial report were incumbents.

Factor 5: The extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process.

As noted above, the Kidd report does not challenge any of the facts and analyses I presented in the discussion of Factor 1 on the ongoing history of racial discrimination in Virginia and Virginia Beach. He does, however, fundamentally misrepresent my report by implying that discrimination ended "long ago," perhaps around 1970 and therefore could not have much of current effect on Hispanics and Asians, who constituted a small share of the Virginia Beach population at that time. (p. 26) Yet, my examination of Factor 1 demonstrated that discrimination persisted long after 1970 and continues throughout time. In fact, far more of the section on this factor is devoted to the period after, rather than before, 1970.

The Kidd report does not dispute that for blacks and Hispanics in Virginia, the effects of discrimination have resulted in a socio-economic standing that is substantially lower than for whites. His only quarrel is for Asians, who he alleges do not have an equivalent history of discrimination. He partially argues that Asians are comparable to whites in socio-economic standing, which is the appropriate measure, not whether they are better off than blacks or Hispanics. In fact, Kidd's count of the comparability between whites and Asians is incorrect. He says that of 15 measures in my initial report, "On six of these, Asians score better than non-Hispanic whites; on two measures they (Asians and non-Hispanic whites) have comparable scores, and on three measures Asians are more like whites than like Hispanics or African Americans." That adds to eleven not fifteen measures. However, an examination of all 15 measures shows that the gap between Asians and whites does slightly favor whites on measures where the two groups are not comparable. The Kidd report also claims incorrectly that "in recent elections Asians have participated at rates statistically equal to or even slightly higher than whites." As will be shown below, Asians in fact participate at lower rates than whites.

Kidd does attempt to show that such socio-economic disparities do not necessarily result in lower turnout for minorities, not just for Asians, but also for Hispanics and blacks. Yet, lower turnout is not the only impact on political opportunity of lower socio-economic standing. It is also reflected in difficulties in recruiting candidates and in financing campaigns. As was demonstrated in my initial report, the five major political donors in Virginia Beach are either white individuals or businesses run by whites. And these donors contribute primarily to white candidates. Lower socio-economic standing is further reflected in the challenges posed by campaigning across the large municipality of Virginia Beach, which encompasses 249 square miles and includes more than 450,000 persons.

Contrary to Kidd's claim, the data he presents does not show a lack of a turnout gap between whites and minorities in Virginia Beach. First, Kidd conducts an apples to oranges comparison; his survey data from the Current Population Survey is for the state of Virginia, not for Virginia Beach, which comprises only about 5 percent of Virginia's population. Kidd turns to overall state turnout even though in his data disclosure he presents the precinct-level turnout and demographic information from which estimates of turnout by race can be computed (see the analysis below). Dr. Kidd simply presumes without evidence or rationale that turnout patterns in Virginia Beach must mirror those statewide: "We can further observe that there is no logical reason to think that the political participation of black, Hispanic, and Asian citizens in Virginia Beach would look different from those across the Commonwealth." Yet, insofar as comparison is possible, turnout patterns in Virginia Beach do not mirror those of the Commonwealth.

The Commonwealth and city provide actual turnout data for the percent of registered voters voting in recent elections. This is not self-reported information. The results show that turnout in Virginia Beach is not the same as turnout statewide, even though the Beach and the Commonwealth have virtually identical demographic profiles. In 2018, turnout in Virginia Beach was 66.0 percent, compared to 71.2 percent statewide; and in 2016, turnout in Virginia Beach was 54.6 percent, compared to 71.1 statewide. The point here is that you cannot uncritically infer political patterns to a locality from patterns statewide. That would be even more true for the more fine-grained turnout of racial groups.⁹

Further, the data presented in the Kidd report represent not actual turnout like the above governmental statistics, but self-reported turnout in the Current Population Survey (CPS). In addition, the data do not show that minority turnout is comparable to white turnout. Rather, as presented in the Kidd report, the data show only that there is a wide margin of error for some measures of self-reported turnout.

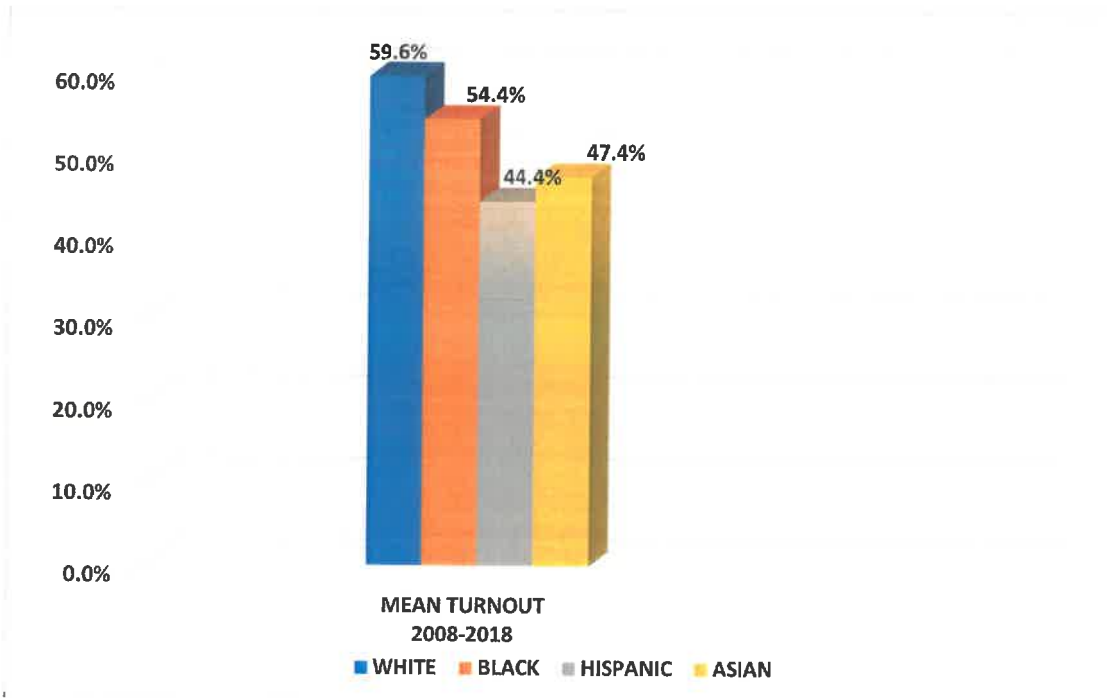
However, an examination of the point estimates (the self-reported turnout percentage around which the margin of error is computed) from Kidd's data disclosure of CPS results, demonstrates that the turnout of African Americans, Hispanics, and Asians across all six election cycles from 2008 to 2018 is almost invariably lower than white turnout. This near-universal pattern of turnout differences cannot be the result of chance variation.

As indicated in Table R6 and Chart R4, low turnout in comparison to white voters impacts all three minority groups in Virginia Beach, black voters, Hispanic voters, and Asian voters. For every election and every group, minority turnout trails white turnout with the single exception of a 0.3 percent lead for Asian turnout in the election of 2016. African American turnout substantially trails white turnout in all elections, save for the presidential elections of 2008 and

⁹ City of Virginia Beach, Election Information and Results, <https://www.vbgov.com/government/departments/voter-registrar/elections/pages/default.aspx>; Virginia Department of Elections, Summary of Virginia Registration and Turnout Statistics, <https://www.elections.virginia.gov/resultsreports/registration-statistics/registrationturnout-statistics/index.html>.

TABLE R6 POINT ESTIMATES OF TURNOUT BY RACE FOR CITIZEN VOTING AGE POPULATION (CVAP) IN VIRGINIA, 2008-2018, BASED ON CURRENT POPULATION SURVEY (CPS) RESULTS RELIED ON IN KIDD REPORT							
Election	White	Black	Difference With white	Hispanic	Difference With white	Asian	Difference With white
2018	60.8%	56.4%	-4.4 percentage points	34.6%	-26.2 percentage points	46%	-14.8 percentage Points
2016	69.6%	64.9%	-4.7 percentage points	64.2%	-5.4 percentage points	69.9%	+0.3 percentage points
2014	45.6%	34.2%	-11.4 percentage points	25.4%	-20.2 percentage points	31.6%	-14 percentage points
2012	67.5%	67.2%	-0.3 percentage points	66.8%	-0.7 percentage points	53%	-14.5 percentage points
2010	44.9%	35.6%	-9.3 percentage point	18.9%	-26 percentage points	22.7%	-22.2 percentage points
2008	69.4%	68.3%	-1.1 percentage points	56.5%	-12.9 Percentage points	61.4%	-8 percentage points
Mean All Elections	59.6%	54.4%	-5.2 percentage points	44.4%	-15.2 percentage points	47.4%	-12.2 percentage points
Source: Current Population Survey (CPS) results provided by Dr. Quentin Kidd in his data disclosure.							

CHART R4: MEAN POINT ESTIMATES OF TURNOUT BY RACE FOR CITIZEN VOTING AGE POPULATION (CVAP) IN VIRGINIA, 2008-2018, BASED ON CURRENT CENSUS REPORT (CPS) RESULTS RELIED ON IN KIDD REPORT



2012 when Barack Obama headed the ballot. On average for all elections, black voter turnout was 5.2 percentage points lower than white turnout. Hispanic voter turnout trailed white turnout in all elections. As indicated in Table R6 and Chart R4, on average for all elections, Hispanic turnout was 15.2 percentage points lower than white turnout. Asian voter turnout trailed white turnout in all elections except for the outlier of 2016, when it exceeded white turnout by 0.3 percentage points. On average for all elections, Asian voter turnout was 12.2 percentage points lower than white turnout.

Ironically, while Kidd declines to use the point estimates to compare white to minority turnout, he does use the point estimates to compare African American and Hispanic turnout. He writes, “While black and Hispanic participation is within the margin of error for every election, and while during two elections (2012 and 2016) the two groups are very close to equal in their levels of voting, *black participation is always higher than Hispanic participation*,” based on the point estimates. (p. 34, emphasis added).

Kidd uses this point estimate comparison between African Americans and Hispanics in an attempt to loosen the connection between socio-economic status and turnout. He writes, “On 11 of the 15 dimensions presented by Lichtman, African Americans score poorer than Hispanics. This is the case for all of the measures of academic achievement. Relying on the logic of Lichtman’s presentation, Hispanics should be more politically active than blacks.” (p. 34). This analysis is flawed, first because it represents another apples to oranges comparison. The socio-economic data in my initial report was for Virginia Beach, whereas Kidd’s turnout data is for all of Virginia. Even for Virginia Beach, the differences between blacks and Hispanics are typically small compared to their differences with whites. Kidd emphasizes the differences between blacks and Hispanics on educational performance, but these are for 8th graders not yet eligible to vote. On educational attainment, Hispanics trail African Americans.

Second, the Kidd analysis assumes incorrectly that socio-economic differences are the sole determinant of turnout. Diminished socio-economic status is an important barrier to political participation that affects all three racial minorities in Virginia Beach, but it is not the sole determinant. Also important is political mobilization. African Americans have achieved significant mobilization in the twenty-first century, which Latinos have not yet matched.¹⁰ Dr. Kidd has acknowledged in his own writings the importance of the political mobilization of African Americans in the South. He wrote that “the two most significant components of the modern transformation of southern politics” are “1) the growth of the GOP and 2) the political mobilization of the African Americans.”¹¹

¹⁰ See for example, Louis DeSipio, “Latino Civic and Political Participation,” in Martha Tienda and Faith Miller, eds. *Hispanics and the Future of America* (National Academies Press, 2006), pp. 447-480; Marcela Valdes, “27 Million Potential Hispanic Votes. But What Will They Really Add Up To?” *New York Times Magazine Feature*, 14 September 2016, <https://www.nytimes.com/2016/09/18/magazine/27-million-potential-hispanic-votes-but-what-will-they-really-add-up-to.html>; John A. Garcia, *Latino Politics in America: Community, Culture, and Interests*, 3rd ed. (Rowman & Littlefield, 2017).

¹¹ M.V. Hood III, Quentin Kidd, and Irwin L. Morris, *The Rational Southerner: Black Mobilization, Republican Growth, and the Partisan Transformation of the American South* (Oxford University Press, 2012), p. 70.

Third, African Americans in Virginia are substantially more likely than Hispanics to be contacted by political campaigns. Table R7 reports results from the Cooperative Congressional Election Study (CCES), a standard source for political analysis. For the elections of 2010, 2012, 2014, and 2016, the CCES asked whether respondents had been contacted by a political campaign or candidate. As indicated in Table R7, 59.1 percent of African Americans in Virginia reported such a contact, compared to 46.9 percent of Hispanics. These differences are statistically significant at levels well beyond what is standard in social science.

TABLE R7 CAMPAIGN CONTACT FOR AFRICAN AMERICANS AND HISPANICS IN VIRGINIA, 2010-2016 GENERAL ELECTIONS			
Group	# Contacted	Total # of Respondents	% Contacted
Black	438	741	59.1%
Hispanic	97	207	46.9%
Source: Cooperative Congressional Election Study (CCES), 2010, 2012, 2014, 2016, https://cces.gov.harvard.edu/ .			

Fourth, unlike African Americans, Latinos face a significant language barrier, which makes it more difficult to navigate and participate effectively in the political system. According to the 2017 US Census American Community Survey, 34 percent of Hispanics in Virginia speak English “less than ‘very well,’” compared to 2 percent of African Americans.

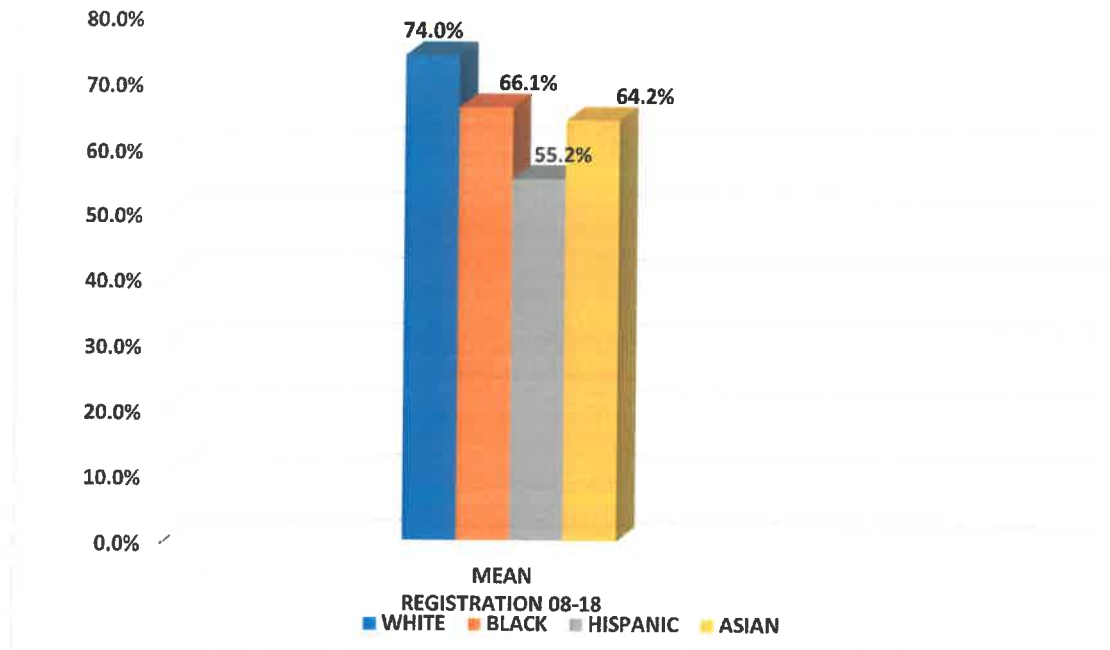
Dr. Kidd also ignores a disparity in his own data on registration rates for whites, blacks, Hispanics, and Asians in Virginia. Disparities in registration are another indicator of the effects of lingering discrimination. Moreover, because of the larger numbers involved, the error margins are smaller for registration than for turnout.

As indicated in Table R8, in every instance, bar none, for all three minority groups, blacks, Hispanics, and Asians, voter registration rates are substantially lower than white rates. Again, the universal pattern cannot be attributed to chance or random factors. In addition, more than half the individual differences between whites and the minority groups are outside the margins of error of the estimates. As indicated in Table R8 and Chart R5, on average black registration rates are 7.9 percentage point lower than white rates. Hispanic rates are 17.3 percentage points lower and Asian rates are 9.8 percentage points lower.

In the data disclosed by Dr. Kidd, he presents precinct-level data prepared by Kim Brace on voter turnout and demographics for Virginia Beach. Yet, rather than using this non-self-reported data to estimate turnout rates for Virginia Beach, he instead turns to survey data for the entire Commonwealth. Analysis of the data in the database that was disclosed and used by Kidd or the elections of 2016 and 2018 demonstrates major turnout differentials based on race.

TABLE R8 POINT ESTIMATES OF REGISTRATION BY RACE FOR CITIZEN VOTING AGE POPULATION (CVAP) IN VIRGINIA, BASED ON CURRENT POPULATION SURVEY (CPS) RESULTS RELIED ON IN KIDD REPORT							
Election	White	Black	Difference With white	Hispanic	Difference With white	Asian	Difference With white
2018	76.8%	66.8%	-10.7 percentage points*	49.0%	-27.8 percentage points*	61.4%	-15.4 percentage Points*
2016	77.5%	71.9%	-6.7 percentage points	70.1%	-7.4 percentage points	73.0%	-4.5 percentage points
2014	69.6%	61.7%	-8.4 percentage Points*	47.4%	-22.2 percentage points*	61.0%	-8.6 percentage points
2012	75.8%	72.6%	-3.8 percentage points	73.6%	-2.2 percentage points	61.1	-14.7 percentage points*
2010	69.5%	51.4%	-17.5 percentage points*	34.6%	-24.9 percentage points*	58.1%	-11.4 percentage points
2008	75.3%	72.3%	-2.8 percentage points	56.5%	-18.8 Percentage points*	70.8%	-4.5 percentage points
Mean All Elections	74.0%	66.1%	-7.9 percentage points	55.2%	-17.3 percentage points	64.2%	-9.8 percentage points
Source: Current Population Survey (CPS) results provided by Dr. Quentin Kidd in his data disclosure.							

CHART R5: MEAN POINT ESTIMATES OF REGISTRATION BY RACE FOR CITIZEN VOTING AGE POPULATION (CVAP) IN VIRGINIA, BASED ON CURRENT CENSUS REPORT (CPS) RESULTS RELIED ON IN KIDD REPORT



Demonstration of turnout differences between whites and minorities and specifically whites and blacks in Virginia Beach does not require elaborate statistical analysis. The visual display of actual precinct-level turnout percentages paired with precinct-level demography are themselves telling. For the general election of 2018, Chart R6 plots for each precinct (each dot represents a precinct) the percent of the citizen voting age population voting and the percent of the citizen voting age population that is white. As is evident from Chart R7 there is a steep, upward relationship between the white share of a precinct and its turnout level in 2018. Chart R8 displays the same turnout data, but this time for the percentage of the CVAP that is black. The Chart R8 shows the opposite results, with a steeply downward relationship between the black share of a precinct and its turnout level in 2018. A nearly identical pattern of relationships between precinct-level turnout prevails for the general election of 2016 as shown in Charts R8 and R9.¹²

This data also enables the use of ecological regression to estimate the relative turnout of whites and blacks in Virginia Beach for 2018 and 2016. The percentages of Hispanics and Asians are too small for separate estimation. The turnout results reported in Table R9 confirm what the charts show, that there is a major gap in turnout rates for white voters and black voters in Virginia Beach. The ecological regression results are further confirmed by the actual turnout rates in precincts that are 90 percent or more white. There are no comparable precincts for blacks.

¹² The Kidd data disclosure includes estimates of total voting age and citizen voting age population and Hispanic CVAP. It includes VAP data for whites and blacks, the great majority of whom are citizens in Virginia Beach.

**CHART R6: RELATIONSHIP BETWEEN TURNOUT AND PERCENT WHITE CVAP,
2018 ELECTION, VIRGINIA BEACH**

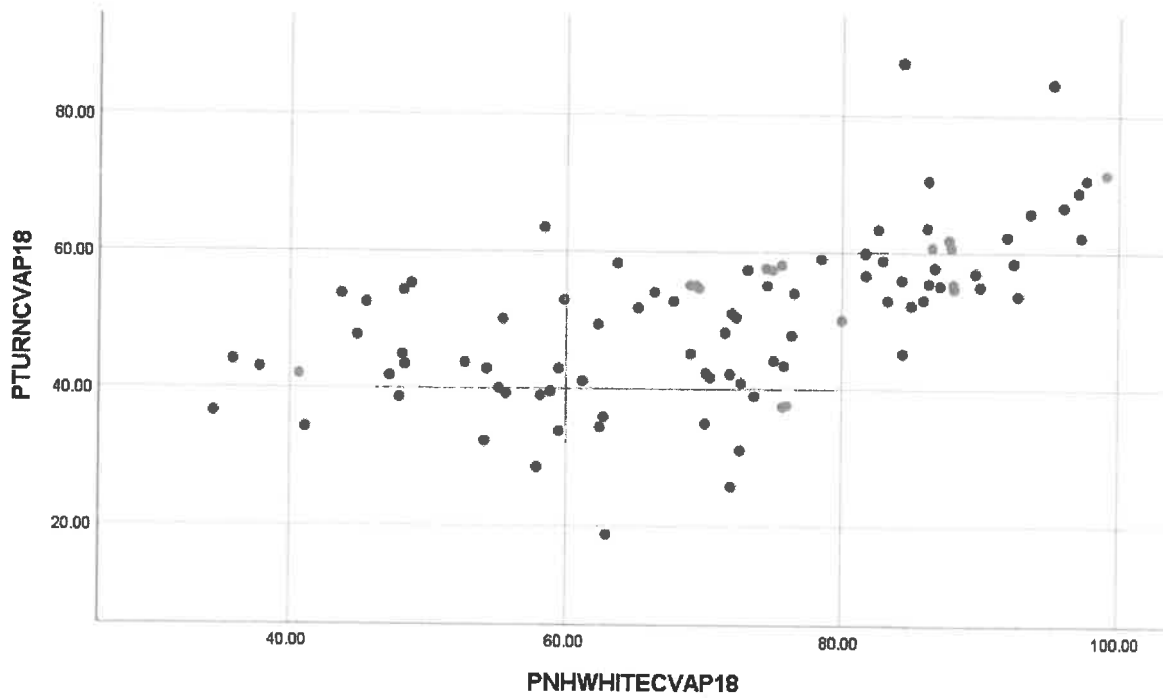


CHART R7: RELATIONSHIP BETWEEN TURNOUT AND PERCENT BLACK CVAP, 2018 ELECTION, VIRGINIA BEACH

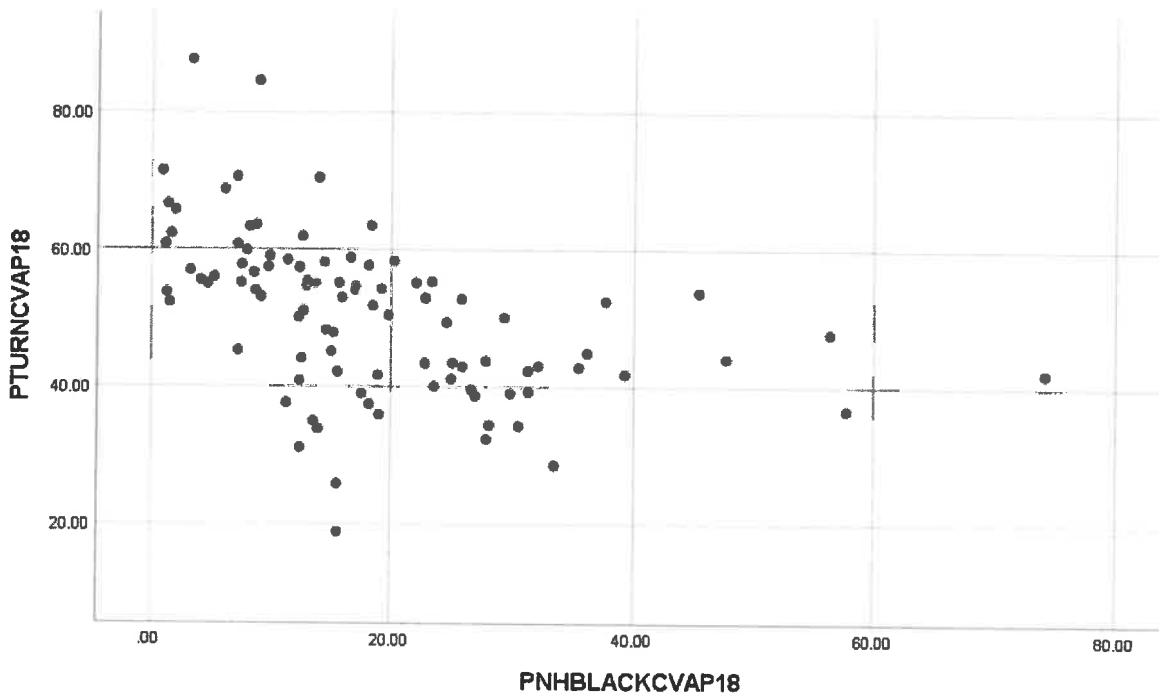


CHART R8: RELATIONSHIP BETWEEN TURNOUT AND PERCENT WHITE CVAP, 2016 ELECTION, VIRGINIA BEACH

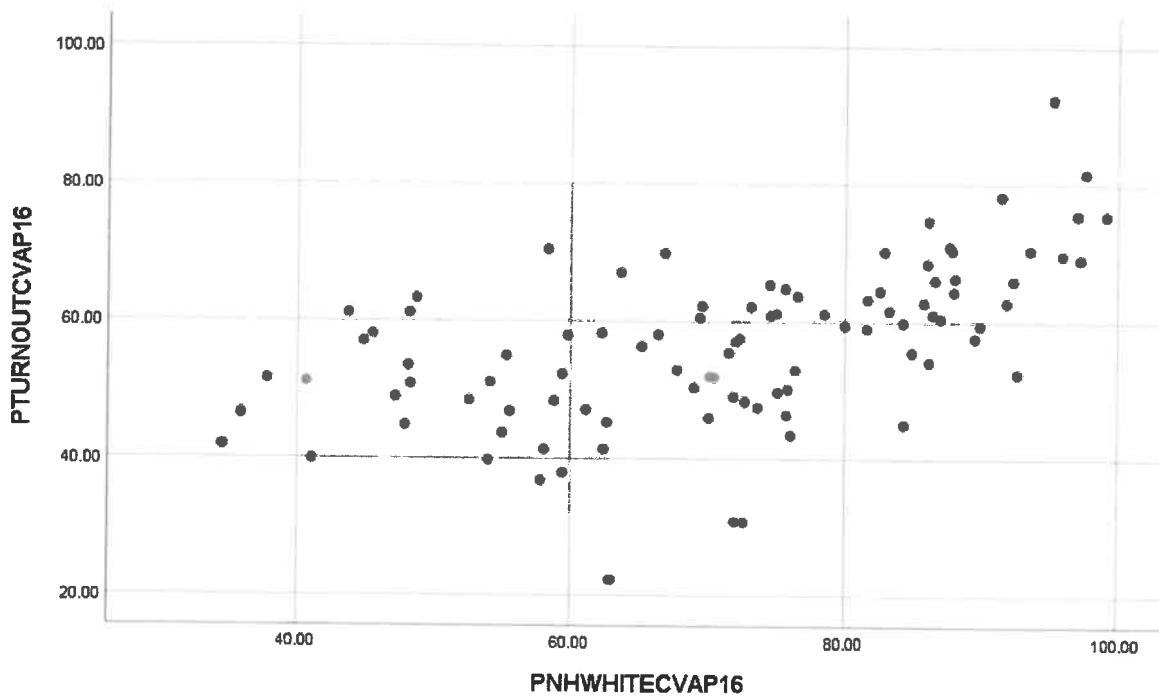


CHART R9: RELATIONSHIP BETWEEN TURNOUT AND PERCENT BLACK CVAP, 2016 ELECTION, VIRGINIA BEACH

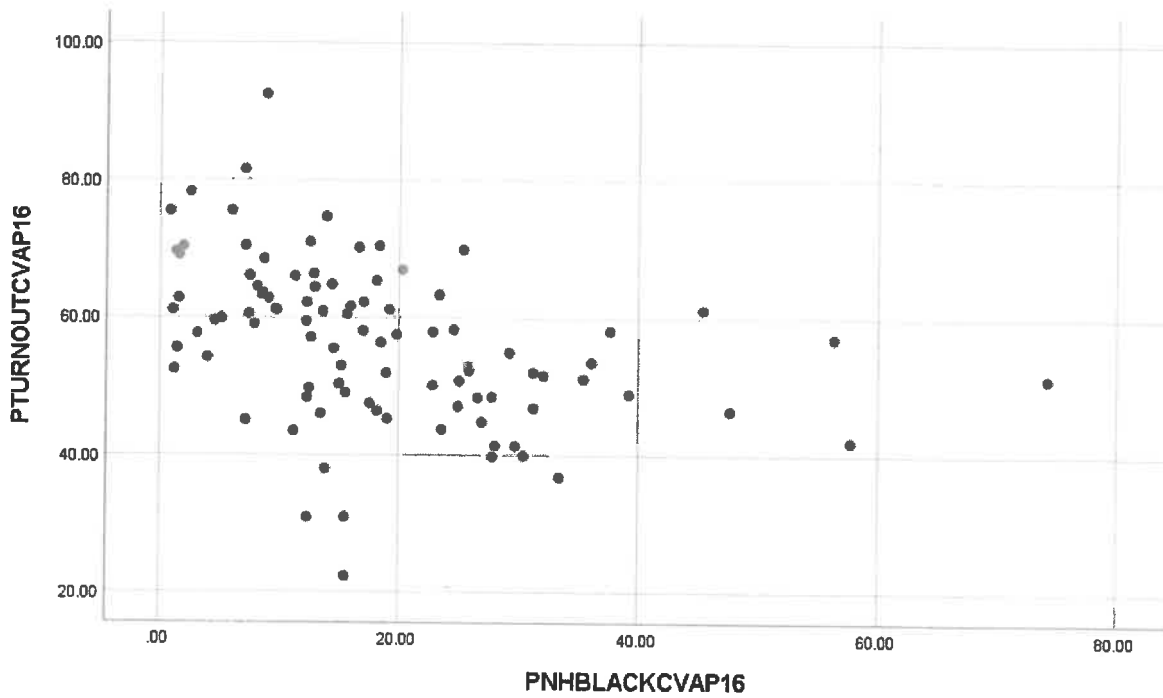


TABLE R9 ECOLOGICAL REGRESSION ESTIMATES OF BLACK & WHITE TURNOUT, VIRGINIA BEACH, 2016-2018 AND WHITE 90%+ CVAP PRECINCTS				
Election	% White CVAP Turning Out	% Black CVAP Turning Out	Difference	Percent Turning Out in 90%+ White CVAP Precincts
2018	61%	29%	+32 Percentage Points	65%
2016	66%	30%	+36 Percentage Points	70%
Source: Data disclosure of Dr. Quentin Kidd.				

Factor 6: Racial Appeals

A contradiction cuts through the heart of Kidd's assessment of racial appeals and his use of turnout data to assess the effects of socio-economic disparities in Virginia Beach. On the one hand, he incorrectly relies on statewide turnout data to assess these effects in Virginia Beach. He does so even though he has available local turnout data and demographic data from which to assess racial differences in turnout for Virginia Beach. On the other hand, he rejects as irrelevant racial appeals in statewide elections, by the Republican Party, or elections outside of Virginia. Kidd cannot have it both ways. If statewide turnout data is relevant, so then must be statewide racial appeals and certainly racial appeals to the set or subset of voters in Virginia Beach.

Kidd also indicates that a racial appeal must be successful in electing a candidate for relevance under Factor 6. But the Factor imposes no such requirement, as there are many reasons why candidates win or lose. Rather, its purpose is to assess the presence or existence of racially charged politics.

The Kidd report only examines three of the many examples of racial appeals presented in my initial report:

Republican George Allen's use of the racial slur "macaca" in his 2006 U.S. Senate campaign.

His only response to this example is to say that "George Allen's infamous 'Macaca' moment occurred on a highway rest stop in the western part of the state. Loudoun County is hundreds of miles away from Virginia Beach." (p. 36) The venue, of course, is irrelevant. Allen was running a statewide campaign and his "infamous" racial slur was widely publicized across the Commonwealth, indeed across the nation.

Racist threats against Virginia Beach black city council candidate Louisa Strayhorn and staffers in 1998.

The Kidd report asserts that this example is irrelevant because it involved an underground campaign of intimidation rather than an open racial appeal in the campaign. Kidd admits, however, that "they reflect racism on the part of some individuals," in this case within Virginia Beach. The threats, therefore, whether or not overtly part of the campaign against her, certainly are indicative of racial politics within Virginia Beach and racial opposition to her campaign, which is the essential purpose of Factor 6. (p. 36). Moreover, Strayhorn, the only minority then on the city council, was specifically targeted by the Republican Party. "We had taken dead aim on Louisa," said Leo Waldrup, Republican state delegate from Virginia Beach and head of the GOP House caucus, she was a rising Democrat, "and that's clearly enough for us to lock and load."¹³

¹³ Bruce Murphy, "Even in the Most Integrated City, Race is Still a Thorny Issue," *Milwaukee Journal Sentinel*, 14 January 2003, <http://mumford.albany.edu/census/2003news/pdf/jsonlineSeries/011403MURPHYjsonline.pdf>.

Racial Appeal by Republican candidate Rocky Holcomb in his 2017 campaign for House of Delegates.

Kidd does not deny that my initial report established not just a subtle but an overt racial appeal. He notes the Holcomb mailer was one which did not just involve candidate Turpin, but also “many in the community accused of being an overt racial appeal.” (p. 36). He discounts this mailer not because it failed to demonstrate a racial appeal to the voters of Virginia Beach, but rather because Holcomb lost: “Voters in Virginia Beach, recoiling from the Holcomb mailer, rejected the appeal and the candidate who ran it.” Yet, regardless of the outcome of the election, this example shows the infusion of race in that election. Moreover, the Kidd report presents not a shred of evidence that white voters in Virginia Beach rejected the appeal. Turpin actually won the election by just 389 votes. Given the many factors that decide elections, it is not possible to attribute Holcomb’s defeat to his racial appeal or even in the absence of analysis to assess whether it helped or hurt his campaign in what Kidd says was otherwise a difficult environment for Republicans. Again, the factor does not require that the candidate making the appeal must win the election.

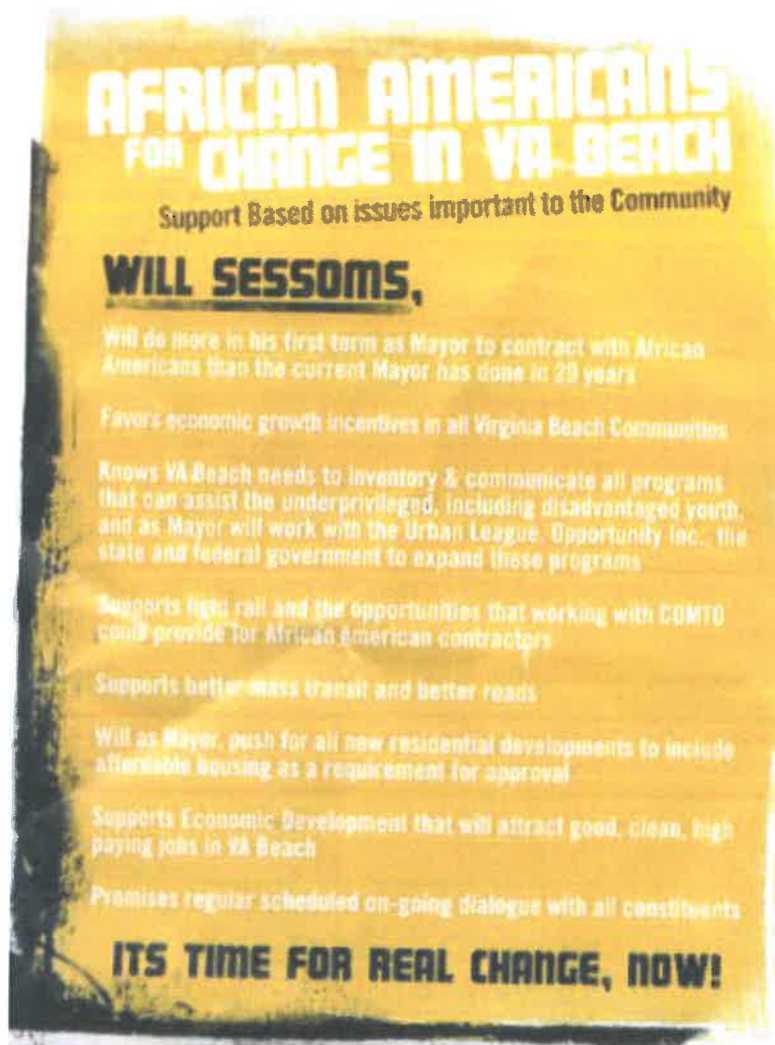
In light of Kidd’s claim about examples for Virginia Beach, I have uncovered an additional racial appeal specifically for a position on the City Council. In 2008, a flier was distributed in black neighborhoods showing white Republican Virginia Beach mayoral candidate Will Sessoms together with a smiling Barack Obama. As is evident from Picture 1 below, the flier had no attribution or authorization of any kind, (e.g., “paid for by ...”), which is required by law. A second flier was also circulated likewise without the legally required attribution/authorization purporting to represent “African Americans for Change.” (Picture 2) It claimed that Will Sessoms “will do more in his first term as mayor to contract with African Americans than the current mayor has done in twenty years.” These were unabashed and deceitful racial appeals to black voters, and the flyer attempted to associate Sessoms with Obama and the so-called African Americans for Change.¹⁴

¹⁴ The source for the fliers and their circulation is Vivian J. Page, “Illegal Fliers’ Effect on VB Mayoral Election,” All Politics is Local, 25 November 2008, <https://blog.vivianpaige.com/2008/11/25/illegal-fliers-effect-on-vb-mayoral-election/comment-page-3/>. A biography of Ms. Page can be found at <https://www.facebook.com/YWCASHR/posts/lets-meet-our-honorees-vivian-j-paige-is-our-2017-women-of-distinction-honoree-i/10155074327349500/>, when she was honored by the South Hampton Road, YWCA as “our 2017 Women of Distinction honoree in Communication.”

Picture 1: Flier Circulated During 2008 Campaign for Mayor in Virginia Beach



Picture 2: Flier Circulated During 2008 Campaign for Mayor in Virginia Beach



Factor 7: the extent to which members of the minority group have been elected to public office in the jurisdiction.

Dr. Kidd's report does not dispute that minorities have trailed behind whites in their election to public office. He also does not dispute that the election of minority candidates during the pendency of a voting rights lawsuit is a special circumstance where, as in Virginia Beach, there has been a lack of prior minority representation on a governing body. Rather, he suggests that members of the city council and others within Virginia Beach may not have been aware of the lawsuit prior to the November 2018 election. The only evidence he presents in support of the supposition is an undisclosed email indicating that the counsel for defendants first briefed the city council on the lawsuit in January 2019.

Contrary to Kidd's supposition, the local media covered the lawsuit immediately after its filing nearly a year before the election on November 18, 2018, and continued coverage during the period prior to the 2018 election. Two members of the city council endorsed the lawsuit long before the 2018 election and in February 2018, the federal judge ordered the city to respond to the complaint:

* On November 20, 2017, three days after the filing of the lawsuit, *WTKR* reported, "Activist Files Lawsuit Against Virginia Beach for Violations of Voting Rights Act." *WTKR* noted that "Latasha Holloway alleges in her lawsuit that the city dilutes minority voting strength to promote white supremacy in the Virginia Beach City Council by using an at-large election system."¹⁵

* A day later on November 21, 2017, *WAVY* similarly reported "Virginia Beach Woman Files Lawsuit Files Legal Action Over City's Election System."¹⁶

* Three days later, on November 23, 2017, *The New Journal & Guide* likewise reported, "Suit Filed Opposes At-Large Elections in Virginia Beach."¹⁷

* On March 4, 2018 *The New Journal & Guide* headlined "Virginia Beach Must Respond to At-Large Voting Complaint." The article reported, "United States District Court Judge Arenda L. Wright Allen has ordered the city to answer political rights activist Latasha Holloway's lawsuit challenging the at-large method of electing the city council of Virginia Beach."¹⁸

* On October 2, 2018 the *Virginian-Pilot* published an article headlined "2 Virginia Beach

¹⁵ "Activist Files Lawsuit Against Virginia Beach for Violations of Voting Rights Act." *WTKR* 20 November 2017, <https://wtkr.com/2017/11/20/activist-files-lawsuit-against-virginia-beach-for-violations-of-voting-rights-act/>.

¹⁶ "Virginia Beach Woman Files Lawsuit Files Legal Action Over City's Election System," *WAVY*, 21 November 2017, https://www.wavy.com/news/virginia-beach-woman-files-legal-action-over-citys-election-system_201803260732334/1078257257. (link no longer active)

¹⁷ "Suit Filed Opposes At-Large Elections in Virginia Beach," *The New Journal & Guide*, 23 November 2017, <http://thenewjournalandguide.com/suit-filed-opposes-large-voting-virginia-beach/>.

¹⁸ "Virginia Beach Must Respond to At-Large Voting Complaint," *The New Journal & Guide*, 4 March 2018, <http://thenewjournalandguide.com/virginia-beach-must-respond-large-voting-complaint/>.

Council Members Want to Change the City's Election System." The article noted that "Two council members are among a group of residents challenging the city's election system, charging that it thwarts competition, favors wealth and special interests, and discourages diversity ... Virginia Beach council members Jessica Abbott and John Moss want the current election system to end."¹⁹

* On October 15, 2018 the *Virginian-Pilot* published an editorial headlined "A Push to Change Beach Voting." editorial noted, "An inability to provide for minority representation on the council led to a lawsuit last year arguing that the hybrid election system "has the effect of unlawfully diluting or minimizing 'minority voting strength'" and violated the Voting Rights Act of 1965 and the U.S. Constitution." The editorial further noted, "There is no question that the Beach's manner of electing its municipal officials is a worthy subject for robust community debate. It's critical that the city make certain that every resident has a voice in governance."²⁰

* Among its questions posed to 2018 candidates for city council in Virginia Beach the *Princess Anne Independent News* asked: "Voters from across the city select members of the city council, including members who represent district seats. Should the city consider another way of selecting members of the council, such as a ward system?"²¹

Long before the filing of the lawsuit, allegations that the at-large system for electing members of the city council and reform through a district system had been a matter of controversy in Virginia Beach. The October 2, 2018 article in the *Virginian-Pilot* noted that "*Six years ago, Moss and state Sen. Bill DeSteph, a former councilman, made a similar effort to end at-large voting districts but couldn't persuade most council members to get on board.*" (emphasis added) The March 4, 2018 article in *The New Journal and Guide* noted that, "Black leaders have complained for years about Virginia Beach's system of electing council but have failed to reform it." The following are examples of local media coverage of the controversy in the decade prior to the filing of the complaint:

* On October 12, 2008 the *Virginian-Pilot* published an article headlined "Wards Would Help Blacks Get Elected." The article said, "African American candidates would have a better chance of getting elected to the council if the city had a ward system, if more residents got involved in leadership boards, or if the black community came together to back one choice, those running for office told a gathering of the Hampton Roads Committee of 200+ Men Inc."²²

* On November 16, 2008, the *Virginian-Pilot* published an article headlined "Black Leaders Discuss a Shift in Voting System." The article quotes African American Louisa Strayhorn, who

¹⁹ Stacy Parker, "2 Virginia Beach Council Members Want to Change the City's Election System," *Virginian-Pilot*, 2 October 2018, https://pilotonline.com/news/government/local/article_5aea8b7a-c591-11e8-b572-3b015d1704d3.html.

²⁰ "A Push to Change Beach Voting," *Virginian-Pilot*, 18 October 2018, p. 8.

²¹ "2018 Virginia Beach Elections: Questions for candidates for City Council, Bayside District," Answers posted: *Princess Anne Independent News*, 1 November 2018, <http://princessanneindy.com/2018/11/01/2018-ccbayside-qa/>.

²² Deidre Fernandes, "Ward Would Help Blacks Get Elected," *Virginian-Pilot*, 12 October 2008, p. B1

lost her reelection bid in 1998 as saying that “It’s not in their [the city council] best interests to change it. I have a feeling we’re going to have to mount a campaign.”²³

* On September 6, 2009, the *Virginian-Pilot* headlined “Beach History of Race Relations.” It reported that “As the city’s minority population grew, the NAACP and some residents urged the City Council to redraw its election districts to create a more heavily minority voting ward, or at least alter the way candidates are elected. While seven of the 11 council members represent districts, they must win the citywide vote, too.”²⁴

* On February 6, 2010, the *Virginian-Pilot* published an article headlined “Filling a Seat at the Table.” The article notes, “The city should, however, take a close look at how council seats are allocated. The system is a weird hybrid. Most cities have either an at-large system, ward system or mix of the two. In Virginia Beach, non-mayoral candidates run for three at-large seats or by district, but voters citywide get to pick the district representatives, too.”²⁵

Second, the Kidd report claims that whites in Virginia Beach interested in electing black candidates during the pendency of the lawsuit should have provided “across-the-board” support for all black candidates running in 2018, “Rouse, Bright, Wooten, & Wray.” (Kidd Report, p. 38). However, such a strategy would have been irrational and counter-productive because it would have diluted support for the strongest candidates (Rouse and Wooten) and undercut an effort to elect these candidates to the city council. As indicated in Appendix I on overlapping candidacies, Bright was running against Rouse at-large in 2018 and Wray was running against Wooten in Centerville.

As part of the misguided notion that whites should have diluted their support among four candidates, Kidd notes that the four did not necessarily get strong support from white voters. A focus on Rouse and Wooten, however, tells a different story. Wooten was the only black candidate for city council in Virginia Beach since 2008 to win a majority of the white vote. As indicated in Table 11 of my initial report, she exceeded the average vote for ten other district candidates by 28 percentage points and 125 percent. Although Rouse did not garner a majority of the white vote in his multiple-seat, multiple-candidate race, Table 10 of my initial report indicated that he exceeded the average vote for ten other at-large candidates by 15 percentage point and 179 percent

Campaign finance reports further document the white focus on Rouse and Wooten, rather than Bright and Wray. Rouse raised \$115,146 and as documented in my initial report, with the exception of fellow retired NFL player Bruce Smith, his major donations all came from whites. In contrast, Bright self-financed her campaign with loans of more than \$60,000. Other contributions amounted to less than \$6,000. Wooten raised \$82,751 in 2018, with all major donations coming from whites. In contrast, Wray raised just \$6,025. In addition, the Kidd report does not cite any

²³ John Warren, “Black Leaders Discuss a Shift in Voting System,” *Virginian-Pilot*, 16 November 2008, p. 1.

²⁴ Deidre Fernandes, “Beach History of Race Relations,” *Virginian-Pilot*, 6 September 2009, p. 1.

²⁵ “Filling a Seat at the Table,” *Virginian-Pilot*, 6 February 2010, p. B7.

black candidates other than Rouse and Wooten who garnered substantial contributions from white donors.²⁶

With respect to contributions by the five major donors in Virginia Beach (all white), the Kidd report fundamentally misunderstands my analysis. (Kidd Report, pp. 38-39). The point of my analysis was not to compare contributions to Rouse and Wooten in 2018 as compared to contributions to other candidates that year. The critical purpose of my analysis was to show that compared to their contribution record since 2008, the contributions by the five major donors to Rouse and Wooten were highly unusual for contributions by these donors to black candidates. This analysis, which the Kidd report does not address, demonstrates that these donors primarily contributed to white candidates from 2008 to 2018, with 18 white candidates receiving contributions as compared to just 4 black candidates. With the exceptions of Rouse and Wooten in 2018, the five donors combined contributed to only two other black candidates, both incumbents, Sherrod in 2011 and Ross-Hammond in 2016. Although not running as incumbents, Rouse and Wooten garnered more than two and a half times the dollar amount contributed by these donors to Sherrod and Ross-Hammond (\$36,500 to \$14,000).²⁷

Moreover, in key ways the Kidd report actually supports the concentration of white donors on Rouse and Wooten. It makes a point of noting that Bright received no contributions from the major white donors. He further notes that “none of Rouse’s top donors contributed to Bright’s campaign” and that “only 2 of the top 10 contributors to Wooten’s campaign for the Centerville District seat in 2018 also contributed to Bright.” He also notes that “only 3 of Rouse’s top donors also contributed to Wooten,” but does not disclose that they were all among the five major white donors to city council campaigns in Virginia Beach. (Kidd Report, p. 39).

Kidd further suggests incorrectly that “the large-donor class appears to have behaved as they often do, which is to spread financial support around as widely as possible with an eye toward supporting candidates who they perceive as having the best chances of winning and who are most likely to support policies that they favor.” He fails to note that in contradiction to the claim of widely spreading the money around, all five of the major donors contributed to both Rouse and Wooten, all in the amount of \$1,000 or more. No other candidate in 2018 received contributions from all five major donors. Overall, the only other candidates to receive united financial support from all five of the major donors were white incumbent mayor Will Sessoms and white incumbent council member Rosemary Wilson in earlier elections. Kidd also provides no evidence to suggest that Rouse and Wooten uniquely favored the policies of all five major donors or that compared to other candidates from 2008 to 2018, they had the best chances of winning. In fact, Rouse’s most prolific backer, Bruce Smith, is a Virginia Beach developer, who, as indicated in my initial report, has assailed the city for allegedly steering contracts disproportionately to whites and turning down his own projects.²⁸

²⁶ Virginia Public Access Project, VPAP.org. For a detailed accounting of Bright’s loans see, Virginia Department of Elections, Campaign Finance Reports, “Reports for Friends of Linda Bright,” <https://cfreports.elections.virginia.gov/Committee/Index/a71fe5b0-2ac0-e811-bffd-984be103f032>.

²⁷ The analysis of campaign contributions is on initial Lichtman report, pp. 47, 50-54.

²⁸ See, also, Alissa Skelton, “NFL Hall of Famer Bruce Smith questions whether race played a part in denial of Oceanfront projects,” *Virginian-Pilot*, 16 November 2016,

It is also worth noting that victory in one election may not accurately portray black electoral opportunities in Virginia Beach. Of the few African Americans who have won election to the Virginia Beach city council, none has ever won reelection. The last such defeat of an incumbent African American council member occurred recently, in 2016, with the loss of Ross-Hammond in the Kempsville District in 2016.

II. Report of Dr. Peter Morrison

Although I was not involved in the census analysis for the construction of illustrative plans in this case, I have previously encountered Dr. Peter Morrison in two previous recent cases in which as in this litigation, he conducted an analysis of Census data for the scrutiny of districting plans. In these prior cases, I was directly involved in performing such an analysis, and assessing Dr. Morrison's analysis. As documented below, in both cases Dr. Morrison committed extreme, consequential errors that fundamentally undermined his conclusions. In both cases, Dr. Morrison worked on behalf of plaintiffs challenging congressional district plans in Maryland and in Dallas County, Texas, respectively. In addition to the examination of Dr. Morrison's factual errors that I encountered in this prior litigation, I will also probe a fundamental flaw in his claim that Dr. Anthony Fairfax's illustrative districts fail to provide a majority of blacks, Hispanics, and Asians combined.

Maryland: Challenge to 2011 Congressional District Plan: *Benisek v. Lamone*, U.S. District Court, Maryland, Case No. 13-cv-3233

In this litigation, Dr. Morrison conducted a fine-grained analysis of census data as he did in the present case. In an attempt to demonstrate that the district under challenge in Maryland, Congressional District 6, under the 2011 plan, did not represent a community of interest, he stated that the 2011 plan split far more Census places than previously under the 2001 plan. This analysis, however, was based on fundamentally flawed data on the percentage of split Census Places in CD6 under the 2001 and 2011 plans. Based upon the correction of his data, the difference in split Census Places in prior CD6 under Maryland's 2001 plan compared to splits in CD6 under the state's 2011 plan was not 48 percentage points as Dr. Morrison previously claimed, but a *de minimis* 4 percentage points, a difference of 44 percentage points and 92 percent (44/48).²⁹

Dr. Morrison admitted to these errors in that case and presented in a supplemental report what he called minor corrections of his initial errors, which he claimed did not alter his conclusions. These corrections, however, were far from minor.

https://pilotonline.com/news/government/local/article_7fd9bd2d-69f7-5cd5-b02a-2660f2c526ef.html.

²⁹ For a full explanation see, *Benisek v. Lamone*, Second Supplemental Expert Report of Allan J. Lichtman, July 12, 2017.

Rather, as demonstrated in Table A1 (all tables are included in Appendix II to this report) the new data he presented on Census Places in Maryland CD6 under the 2001 and 2011 state congressional plans differs by many orders of magnitude from the data on which he relied for his conclusion in his opening report. As indicated in Table A1, in his supplemental declaration, Morrison identified 135 Census Places as falling wholly or partially within CD6 under the 2001 plan, compared to 35 Census Places that he identified in his opening report. This amounts to an additional 100 Census Places, for *an increase of 286 percent*. In his supplemental declaration, Morrison identified 122 Census Places as falling wholly or partially within CD6 under the 2011 plan, compared to 22 Census Places that he identified in his opening report. This amounts again to an additional 100 Census Places, but it results in *a much larger percentage increase of 455 percent*.

As indicated in Table A2, these corrections by Dr. Morrison in *Benisek v. Lamone* account for the reduction in the difference in split Census Places under the two plans from 48 percentage points in his opening report to 8 percentage points in his supplemental declaration. His 286-percent correction in the number of Census Places in CD6 under the 2001 plan reduces the percentage of split precincts from 11 percent to 3 percent. His much larger 455 percent correction in the number of Census Places in CD6 under the 2011 plan results in a far more substantial reduction in the percentage of split Census Places *from 59 percent to 11 percent*. These two corrections, as shown in Chart R10, explain the reduction in the difference in split Census Places from 48 percent to just 8 percent.

Despite the drastic reduction in any difference in split Census places between the 2001 and 2011 plans, Morrison made no changes in his dramatic finding of a “smoking gun” he initially drew from the flawed data. In fact, he simply plugged the new numbers into his prior language with no qualification of explanation:

Morrison Opening Expert Report, Benisek, paragraph 145, page 68

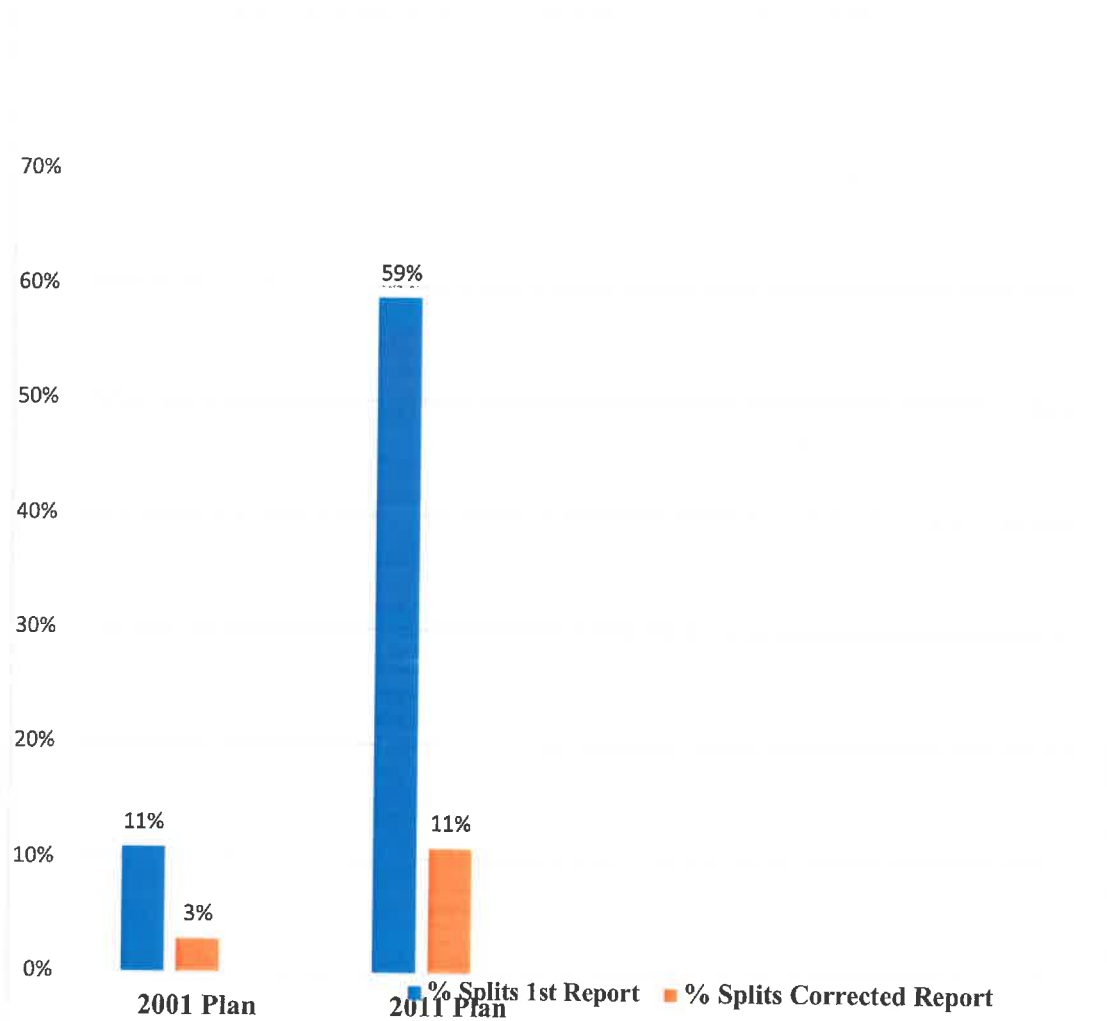
“The post-redistricting increase in non-intact Census places (from 11% to 59% of all places) is a “smoking gun” that exposes motives beyond simply rebalancing total population.”

Morrison Supplemental Expert Report, Benisek, paragraph 9, page 3

“The post-redistricting increase in non-intact census places (from 3% to 11% of all places) is a “smoking gun” that exposes motives beyond simply rebalancing the total population.”

Dr. Morrison purports to have presented in his supplemental report the correct number of Census Places in CD6 under the two plans. Consistent with his opening report, however, he provides no citations or sources for his corrected counts. These counts *even after the corrections* are still erroneous based on the U.S. Census data, that lists the number of Census Places in Maryland and identifies the congressional districts in which they are wholly or partially contained

CHART R10: CHANGES IN DR. MORRISON'S ASSESSMENT OF CENSUS PLACE SPLITS FIRST AND CORRECTED REPORT, MARYLAND 2001 AND 2011 CONGRESSIONAL REDISTRICTING PLANS



under the 2001 and 2011 Maryland congressional plans. In fact, even Dr. Morrison's corrected data was still highly inaccurate.

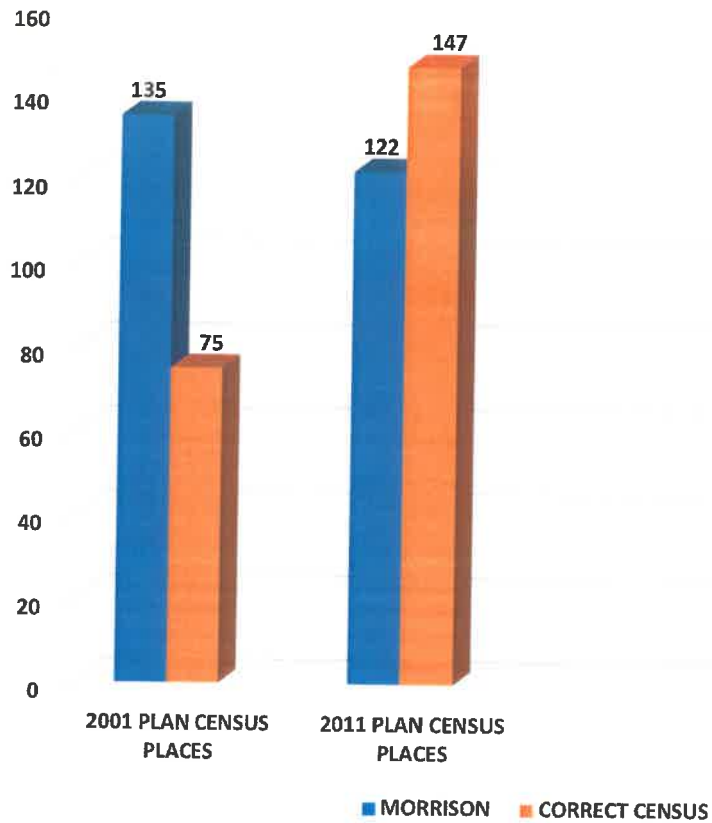
Dr. Morrison identified 135 Census Places as within CD6 under the 2001 plan, compared to the 75, according to Census data. Dr. Morrison did not identify the source of the data, but he purported to use data from the 111th Congress while the 108th Congress was the data available from the Census on its public website. Therefore, the source of his data for the 111th Congress was unclear, and it is also unclear whether he was using the definitions of census designated places under the 2000 Census or whether he was using definitions of census designated places that would be used in the 2010 Census. The boundaries of census designated places change over time. See U.S. Census Bureau, "Geographic Boundary Change Notes, Maryland," <https://www.census.gov/geo/reference/bndrychange/changenotedisplay.php>.

The 108th Congress was therefore the appropriate comparator as the version of the data that was publicly available, as it contained the congressional district boundaries for the 2001 plan, and the census designated place definitions closest in time to the ones that would have been known to the 2001 map-drawers in Maryland. Data from a later Congress that Dr. Morrison purported to use may not match the Census Places at the time of the redistricting and therefore was misleading.

By using non-public information related to the 111th Congress without specifying the date of the census designated place definitions in his corrected data, Dr. Morrison identified 135 Census Places as within CD6 under the 2001 plan. As indicated in Table A3, and Chart R10, this compares to the correct 75 Census Places according to Census data. He thus overstated the number of 2001 Census Places in CD6 by 60, for *an increase of 80 percent*. In his corrected data, Morrison identified 122 Census Places as within CD6 under the 2011 plan, compared to 147 according to Census data. Thus, for the 2011 plan, he understated not overstated the number of Census Places by 26, for *a decrease of 17 percent*.

As indicated in Table A4, and Chart R11, Dr. Morrison's *overstatement* of the number of Census Places in CD6 under the 2001 plan in his corrected data, resulted in an *understatement* of the percentage of split Census Places of 3 percent, compared to a corrected 5 percent, for *an increase of 2 percent*. In contrast, Dr. Morrison's *understatement* of the number of Census Places in CD6 under the 2011 plan in his supplemental declaration, resulted in an *overstatement* of the percentage of split Census Places of 11 percent, compared to a corrected 9 percent, for *a decrease of 2 percent*. Thus, his opposite and compounding errors, even in his corrected data, resulted in an overstatement of the difference in split precincts of 8 percentage points, compared to a correct *de minimis* difference of just 4 percentage points.

CHART R11: ERRORS IN MORRISON'S *CORRECTED* NUMBERS OF CENSUS PLACES FOR MARYLAND CONGRESSIONAL 2001 AND 2011 PLANS



Dr. Morrison also included in his count of split Census Places in the 2011 plan places that are not split in any consequential way. That is, no persons or a minimal number of persons are included in one side of the split. For example, the most important splits that he identified are the only cities split between CD6 and CD8 in the 2011 plan: Frederick and Rockville (no district other than CD8 borders CD6). However, a declaration submitted by Shelly Aprill of the Planning Data Analysis Unit of the Maryland Department of Planning, indicated that the CD6 side of the Frederick City split *contained no population* and the CD8 side of the Rockville City split contained *only 4 persons*. Just the elimination of these two splits from Dr. Morrison's tally of 13 split Census Places in CD6 under the 2011 plan would have reduced the percentage of split Census Places from 9 percent to 7 percent, just 2 percentage points more than the percentage of CD6 splits under the 2001 plan.³⁰

These errors demonstrate that Dr. Morrison's analysis is unreliable.

Dallas County Texas: Challenge to 2011 County Commission District Plan: *Harding v. Dallas County*, U.S. District Court, Northern District, Texas, Case No. Civ. No. 3:15-CV-131-D

In parallel with his analyses in the Maryland litigation, Dr. Morrison analyzed for this case split precincts within the 2011 districting plan for the Dallas County Commissioners' Court. Here, his aim was to show that a large number of splits within Census designated municipalities showed that the plan failed to represent to communities of interest. As in the Maryland litigation, his analysis was again marked by extreme, consequential errors that fundamentally impacted his conclusions.³¹

Dr. Morrison indicated in his report to the Dallas County Court that he "tentatively identified 16 separate instances where commissioner district boundaries appear to split the boundaries of established cities." Morrison was not equivocal about the important impact of this finding: He termed this number of city splits "indefensible." Map 1 below and the official Texas Legislative Council (TLC) report of split cities in the 2011 Dallas County Commissioners Court plan provided the necessary information to test Dr. Morrison's assessment in that case. This information summarized in Table R10 demonstrates that Dr. Morrison's tally of city splits in the Dallas County case was highly inaccurate. The Table evaluates descriptions of each of the 16 splits provided to defendants in Dr. Morrison's data disclosure for the Dallas County litigation. The results presented in Table R10 indicate that, upon correction, there were not 16 splits that involve exchanges of population in the 2011 plan, but only 9 such splits. For 6 of the 16 splits that Dr. Morrison identified, there was no exchange of population (splits #s 1,2,4,5,6, and 16). This includes one split (# 6) that involves only water, not people. The actual 9 splits were fewer than the 12 splits in his own alternative plan, drawn without any of the constraints incumbent on any political body.

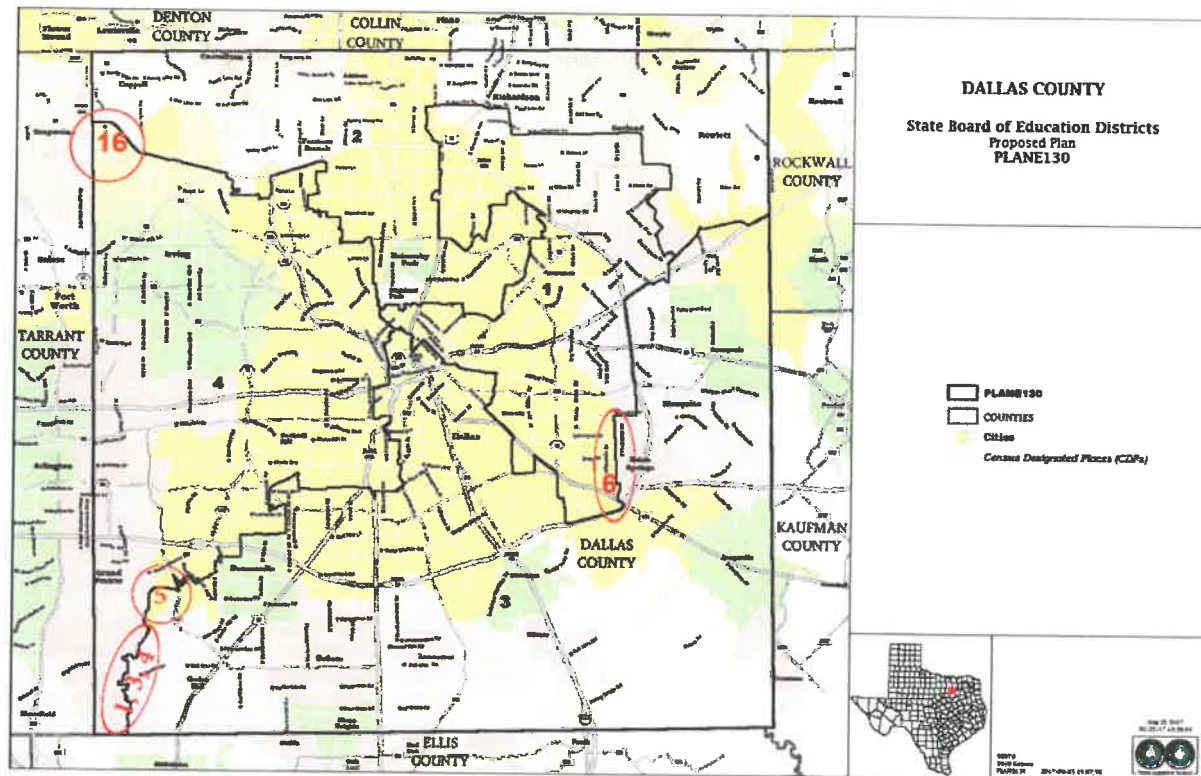
³⁰ *Benisek v. Lamone*, Declaration of Shelly Aprill, June 29, 2017, p. 2.

³¹ For a full explication see, *Harding v. Dallas County*, Rebuttal Report of Dr. Allan J. Lichtman, October 13, 2017.

Table R10
Analysis of the 16 Splits of Cities in the 2011 Dallas County Commissioners Court
Redistricting Map Alleged in the Morrison First Report

Split Described in Morrison Data Disclosure	Analysis of the Purported Split
1. District 3 reaching into Grand Prairie	Error: District 3 under the current map does not include any population from Grand Prairie.
2. District 3 reaching into Grand Prairie a second time	Error: District 3 under the current map does not include any population from Grand Prairie.
3. District 3 reaching into Southwest Dallas	Correct
4. District 4 reaching down into Cedar Hill	Error: District 4 under the current map does not include any population from Cedar Hill.
5. District 3 reaching up into Southwest Dallas	Error: The area identified is water, part of Joe Pool Lake, and does not include any population.
6. District 1 reaching into Balch Springs	Error: District 1 does not include any population from Balch Springs.
7. District 1 reaching into Mesquite	Correct
8. District 3 reaching into Eastern Garland	Correct
9. District 2 reaching from Rowlett into Southeast Garland	Correct
10. District 2 avoiding Southern, Western, and Central Garland	Correct: With caveat that it is difficult to determine the exact meaning of "avoiding."
11. District 1 reaching into Garland, but avoiding Eastern Garland	Error: Duplicates splits described in # 8 and #9.
12. District 1 reaching into Richardson	Correct
13. District 1 reaching west of Richardson into North Dallas	Correct
14. District 2 reaching out of Farmers Branch into West Dallas	Correct
15. District 2 reaching from Coppell and Addison into Irving	Correct
16. District 2 reaching from Coppell and Addison into Irving	Error: District 4 does not include any population from Coppell.
Source: Maps and Texas Legislative Council (TLC) report of Split cities.	

Map 1
Overlay of County Commissioners Court Districts on Dallas County With Morrison Errors
Circled



Morrison's erroneous city splits were all documented in the TLC report of split precincts and circled in Map 1, above. (TLC reports are used in Texas litigation and are relied upon by federal courts). In addition, split # 11 duplicates splits #s 8 and 9. Thus, Dr. Morrison *inflated by 78 percent*, from 9 to 16, the number of splits in the 2011 Dallas County redistricting plan. Moreover, even the 9 alleged splits exaggerated the realistic tally of split cities in the current map, because they included splits in the city of Dallas. The City of Dallas had to be split in any County redistricting plan because its population is so large. According to the maps and the TLC split city report, there are only 5 city splits in the 2011 map (Garland twice, Irving, Mesquite, and Richardson).

Dr. Morrison also highlighted four city splits as of special significance in his report in the *Harding v. Dallas County* case:

- “1. The northeastern portion of Irving (circled in red): An area has been amputated from this city and included instead in a different district (D2, shown in blue).
2. A tiny northern portion of Cockrell Hill (circled in red): This area has been amputated from this city and included as well in a different district (D2, shown in blue).
3. A southern part of Richardson (circled in red): This area has been amputated from this city and included instead in District 1, shown in brown.
4. A southeast portion of Garland (circled in red): This area has been separated off and included in District 2 (shown in blue).”

Morrison said in the Dallas County case that “This exchange of territory” had “the obvious effect of shifting predominately White areas within each city *into* Commissioner District 2” and “the obvious effect of shifting areas that are less heavily White *out* of District 2.” These exchanges, he states, were indicative of a “packing” of whites into District 2. (p. 9, emphasis in original)

Once again, Dr. Morrison's analysis had a serious, consequential error. The results were not at all obvious. Cockrell Hill was not split at all. The red dot to which he referred on the map in his report was not a city split, but simply represented the residence of Dallas County Commissioner John Wiley Price, who is African American. Dr. Morrison failed to explain why he singled out the residence of the only African American member of the Commissioners' Court. Thus, one of the four alleged splits that Dr. Morrison highlighted as of special significance in his report does not exist.

Dr. Morrison indicated in his deposition in the Dallas County case that he had not fully checked or verified this crucial analysis of split precincts prior to submitting his report to the court in that case and concluding that the number of splits was “indefensible.” He implausibly stated that even if his analysis was “completely flawed and misunderstood on my part,” it wouldn't have changed his conclusion. As he testified at trial:

Morrison: And I am still at a stage of needing to verify where those splits are. I've not completed that analysis. And I'm not entirely sure that all of

the splits that I've identified are where they appear to be. And I'm not entirely sure I've perfectly approximated them.

Question: Isn't that though -- that analysis and process -- isn't that, sort of, the keystone to your conclusion that the enacted map split too many precincts or cities?

Morrison: It's not a keystone conclusion; it's a peripheral issue. I'm saying that -- well, let me put it this way. I haven't yet completed that analysis, so I'm going to say that analysis is still in the works. *My opinion would not change if that analysis proved to be completely flawed and misunderstood on my part in terms of the boundaries that I see.* (emphasis added)³²

Even at the time of trial, Dr. Morrison did not produce a corrected and verified report of city splits. Referring back to his November 8, 2017 deposition, Dr. Morrison was asked the following at trial. As the expert analyzing Dr. Morrison's work in that case, I attended both the deposition and the trial:

Question: "And at some point did you produce a subsequent report that does accurately approximate them [City splits] and identify them and verify them for us. Isn't that true."

Morrison: "I didn't feel it was necessary to do any further --."

Question: "I'm sure you have an explanation, sir."

Morrison: "No I did not."

Question: "Did you produce a report or not?"

Morrison: "Pardon me."

Question: "Did you produce a report and provide us your verified list which you had not done on November 8?"

Morrison: No, I did not.³³

In addition, there was the following relevant exchange:

Question: "Is there any quality social science journal that would produce this as a peer-reviewed work at the level that you've done at this point, unverified and unfinished?"

³² *Harding v. Dallas County*, Deposition of Dr. Peter A. Morrison, p. 131, l. 19-22, 132, l. 1-14.

³³ *Harding v. Dallas County*, Trial Transcript, 16 April 2018, Vol. 2 Tr. at 26:9-219:5, p. 102, l. 12-22.

Morrison: “Before I submitted it to a journal, which I intend to do, I would very likely want to take a look at these and verify them – or at least say the ones that I’m confident of now illustrate how one goes about identifying the statistical footprint of intent.”

Question: “The court was entitled to that courtesy?”

Morrison: “I don’t regard it as a courtesy. I regard it as a peripheral issue at this point from the court’s standpoint.”³⁴

The only other issue I consider in response to the Morrison report in this litigation relates to his critical bottom-line conclusion. Based on his own construction of Census data, Morrison concludes that the two districts in the illustrative plan of Dr. Anthony E. Fairfax fall just short of the 50% threshold. Morrison writes on p.2 of his report: “Specifically, I obtain 49.99% for his District 1 (vs. Fairfax’s 50.03%) and 49.96% for his District 2 (vs. Fairfax’s 50.04%).” As a result, he claims that the illustrative plan fails to satisfy Prong One of the three-part *Gingles* test.

Even taking Dr. Morrison’s results at face value, they fail to show that the Fairfax’s illustrative plan fails to meet Prong One of the *Gingles* test, because Dr. Morrison is relying on 2013 – 2017 Census data, with a midpoint of 2015. What Dr. Morrison fails to acknowledge is that the percentage of the white population in Virginia Beach has been shrinking and the percentage of the minority population has been rising.

Table 3 of the Fairfax report demonstrates that from the Census estimates of 2008-2012, midpoint 2010, to the estimates of 2013-2017, midpoint 2015, the white CVAP of Virginia Beach shrank by 2.3 percentage points. In contrast, the combined black, Hispanic, and Asian CVAP rose by a 1.55 percent. If these trends are even roughly approximated over the next five years than even by Dr. Morrison’s calculations districts at 49.99% and 49.96% combined black, Hispanic, and Asian CVAP (which round to 50%) would surely rise above the 50% mark by 2019 and 2020, the time of the next municipal election in Virginia Beach.

Population projections confirm the continuation of this trend toward greater diversity in Virginia Beach through a shrinking white percentage and a rising black, Hispanic, and Asian percentage. As indicated in Figure 1 below, the USA Today diversity index, computed by Proximity One for Virginia Beach, has been rising steadily and is projected to continue to rise through 2020 and beyond.³⁵

Furthermore, in order to meet *Gingles* Prong 1, plaintiffs merely need to establish that minorities constitute a majority in a single member district. Thus, an illustrative plan showing a substantial majority in at least one district would meet Prong 1. Moreover, Dr. Spencer has

³⁴ Ibid., p. 104, l. 4-15.

³⁵ Proximity One, USA Today Diversity Index, Virginia Beach, VA, http://proximityone.com/county_diversity_1960_2060.htm#diversity.

produced reconstituted election results showing minority voters would enjoy an effective opportunity to elect candidates of their choice under the illustrative plan's Districts 1 and 2.

Conclusions:

In sum, the Kidd report addresses only a limited number of the factors relevant to the totality of circumstances confronting minorities in Virginia Beach that were analyzed in my initial July 15, 2019 report. His consideration of the remaining factors fails to undermine any of the conclusions of my initial report. Even using his own standards, voting is clearly polarized along racial lines in Virginia Beach. The eight black candidates, garnering more than 50 percent of the black vote, for which Kidd concedes black voter cohesion, averaged 81.9 percent black voter support and 22.0 percent white voter support for a polarization level of 59.9 percent. In elections for 13 positions in which black candidates competed (excluding withdrawn candidate Burton) from 2008 to 2014 11 black candidates were the candidate of choice of black voters. Only 3 of these candidates prevailed and only one before the pendency of the lawsuit.

In numerous ways the unique hybrid system of electing members of the city council in Virginia Beach burdens minorities. The Kidd report ignores the unique use of numbered or designated posts in Virginia Beach. Such a system that precludes single-shot voting is a long established mechanism for discriminating against minorities and is unique to Virginia Beach among Commonwealth cities. Criticism of the system has long been covered in the local press. According to data that Kidd does not dispute, there are two other discriminatory features of the Virginia Beach electoral system. The city tied for second in the largest area and first in the largest population for campaigning for city council among 12 other large cities in the Commonwealth. The Kidd report concedes that the Illustrative Plan would reduce the geographic area and population for city council campaigning in Virginia Beach by 90 percent. The Illustrative Plan would move Virginia Beach to near the middle of the distribution in geographic area and near the bottom in population.

The Kidd report accepts contributions by candidates to other candidates as an informal form of slating and his standard of examining only intra-election contributions (although flawed) only strengthens the finding that such slating heavily favors white over black candidates. Seven white candidates and no black candidates competing for city council positions in Virginia Beach from 2008 to 2018 garnered contributions from two or more other intra-election candidates.

The Kidd report's attempt to diminish turnout differences between whites and the three minority groups in Virginia Beach is flawed by his reliance on self-reported statewide data, even though he had available the information needed to estimate white and minority turnout for Virginia Beach. Yet even his own source of statewide data, when properly analyzed shows that with one minor exception, turnout by all three minority groups trailed white turnout, a pattern that cannot be explained by chance variation. The Kidd report also ignores the information on statewide registration rates contained in his data disclosure. Examination of this data shows that all three minority groups universally trailed whites in their registration rates. The overall pattern cannot be explained by chance variation and half the differences for individual groups and years fell outside the margins of error. Examination of actual precinct-level turnout and demographic

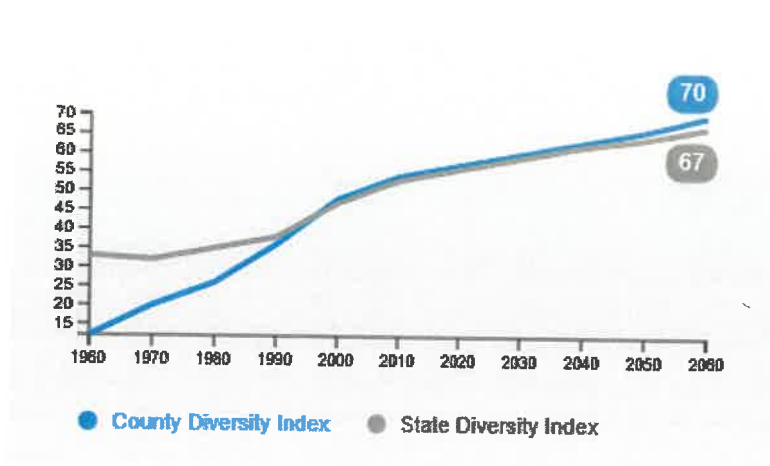
data for the precincts of Virginia Beach provided in the Kidd data disclosure shows that black voters and other minority voters substantially lagged behind whites in voter turnout for Virginia Beach elections in 2018 and 2016.

Finally, the Kidd report acknowledges that the election of minorities to a governing body during the pendency of a lawsuit can be a special circumstance. However, his attempts to show otherwise for the elections of black candidates Rouse and Wooten in 2018 are unavailing. Contrary to Kidd's assertion, the lawsuit was covered widely in the local media well prior to the 2018 election. Prior to the election, it was a matter of commentary by members of the city council and the subject of a judicial order. Controversy over the system for electing members of the city council and proposed reforms had been a matter of lively controversy in the city long before the lawsuit. In addition, the Kidd report does not present any evidence to refute the findings of my July 15, 2019 report that as compared to all prior black candidates for city council, Rouse and Wooten received highly unusual support from both white donors and white voters -- standard indicia of special circumstances.

With respect to the Morrison report, any claims on his part should be regarded with caution given my recounting of the experiences when I was an opposing expert in the Maryland partisan gerrymandering and the Dallas County voting rights litigation. In addition, Dr. Morrison's claims about the failure of illustrative districts to reach the 50%+ combined black, Hispanic, and Asian threshold is fatally flawed by his failure to consider demographic trends within Virginia Beach showing a rising combined minority and a falling white share of the citizen voting age population.

FIGURE 1 USA DIVERSITY INDEX, PROJECTIONS, VIRGINIA BEACH, PROXIMITY ONE

VIRGINIA BEACH
VA



APPENDIX

APPENDIX I: OVERLAPPING CANDIDACIES, VIRGINIA BEACH CITY COUNCIL ELECTIONS, 2008-2018

November 4, 2008 General and Special Elections City of Virginia Beach - Official Results
Mayor: John D. Moss Meyera E. Oberndorf W. D. Sessoms, Jr Scott W. Taylor

At Large: Georgia F. Allen Leona M. Shuler Keith J. Strausbaugh Lawrence J. Teator
Rosemary A. Wilson

CENTERVILLE: Robert M. Dyer, Kempsville: Harry E. Diezel Jose P. Flores Iii Andrew
R. Jackson Rose Hall: Glenn R. Davis Reba S. Mcclanan

November 2, 2010 General and Special Elections City of Virginia Beach - Official Results
Member City Council - At Large: R S Bellitto J D Cabiness Ii B R Desteph Jr W W Erb A R
Jackson J D Moss D S Redmond

BAYSIDE: G Furman Iii L R Jones, Beach: S J E Uhrin, Lynnhaven: J T Hedrick J L
Wood, Princess Anne: T J Bullock B M Henley

Commonwealth of Virginia, 11/8/2011 - Election Results for 2011 November General:
At Large: Dennis E. Free Mike P. Makala John D. Moss Prescott Sherrod

November 6, 2012 General and Special Elections City of Virginia Beach - Official Results
Mayor: Walter W. Erb Richard W. Kowalewitch W. D. Sessoms, Jr.

At Large: Kenny E. Golden, Rosemary A. Wilson

CENTERVILLE: Robert M. Dyer, KEMPSVILLE: Bill J. Dale Amelia N. Ross-
Hammond C. L. Smith, A. M. Weeks, ROSE HALL: Glenn R. Davis, Jr. David M. McCormick

Commonwealth of Virginia Official Results 2014 November General, At Large: M. Ben
Davenport George Furman III Brad D. Martin John D. Moss

BAYSIDE: Louis R. Jones, BEACH: John E. Uhrin, LYNNHAVEN: James L. Wood,
PRINCESS ANNE: Pieri E. Burton Barbara M. Henley, ROSE HALL: Beatrice R. "Petey"
Browder James D. Cabiness II Stephen A. Johnston Shannon D.S. Kane

COMMONWEALTH OF VIRGINIA Official Results 2016 November General, Mayor:
George Furman III (I) Richard W. "RK" Kowalewitch (I) W. D. "Will" Sessoms, Jr. A. M. "Don"
Weeks

At Large: Dane U. Blythe Courtney L. LaLonde Rosemary A. Wilson Pam D. Witham,

CENTERVILLE: Robert M. "Bobby" Dyer, KEMPSVILLE: Jessica P. Abbott Amelia N. Ross-Hammond, ROSE HALL: Robert K. Dean Shannon D. S. Kane

COMMONWEALTH OF VIRGINIA Official Results, 2018 November General, Mayor: M. Ben Davenport Robert M. "Bobby" Dyer

At Large: Linda M. Bright Garry B. Hubbard John D. Moss Dee B. Oliver Aaron R. Rouse Allison M. White

BAYSIDE: Louis R. Jones Brad D. Martin, BEACH: John E. Coker Richard W. "RK" Kowalewitch David Nygaard John E. Uhrin, CENTERVILLE: C. Conrad Schesventer II Sabrina D. Wooten Eric V. Wray, Jr, LYNNHAVEN: Susanne M. Henderson Michael P. "Mike" Maskell James L. "Jim" Wood, PRINCESS ANNE: Pieri Evan Burton Barbara M. Henley Karen B. Kwasny Tim P. Worst

Source: Virginia Beach, Election Information & Results,
<https://www.vbgov.com/government/departments/voter-registrar/elections/pages/default.aspx>

APPENDIX II: TABLES INDICATING MORRISON ERRORS IN *BENISEK V. LAMONE*.

**TABLE A1
DATA IN MORRISON OPENING REPORTED COMPARED TO DATA IN
SUPPLEMENTAL DECLARATION**

Number of Census Places in CD6 in Maryland's 2001 Congressional Plan			
Morrison Supplemental Declaration	Morrison Opening Report	Difference in Number	Difference in Percent
100	35	100	+286%
Number of Census Places in CD6 in Maryland's 2011 Congressional Plan			
Morrison Supplemental Declaration	Morrison Opening Report	Difference in Number	Difference in Percent
122	122	100	+455%
Sources: Morrison Opening Report, Table 3, p. 67; Morrison Supplemental Declaration, Unnumbered Table, p 3.			

TABLE A2
THE PERCENTAGE OF SPLIT PRECINCTS IN THE 2001 AND 2011 CONGRESSIONAL PLANS,
MORRISON SUPPLEMENTAL DECLARATION COMPARED TO CORRECT DATA

Morrison Opening Report						
# of Census Places 2001 Plan	# of Split Places 2001 Plan	% of Split Places 2001 Plan	# of Census Place 2011 Plan	# of Split Places 2011 Plan	% of Split Places 2011 Plan	Difference In Percentage Points
35	4	11%	22	13	59%	+48%
Morrison Supplemental Declaration						
# of Census Places 2011 Plan	# of Split Places 2001 Plan	% of Split Places 2001 Plan	# of Census Place 2011 Plan	# of Split Places 2011 Plan	% of Split Places 2011 Plan	Difference In Percentage Points
135	4	3%	122	13	11%	+8%
Sources: Morrison Opening Report, Table 3, p. 67; Morrison Supplemental Declaration, Unnumbered Table, p 3.						

TABLE A3
DATA IN MORRISON SUPPLEMENTAL DECLARATION COMPARED TO
CORRECTED DATA

Number of Census Places in CD6 in Maryland's 2001 Congressional Plan			
Data From Census Report	Data in Morrison Supplemental Declaration	Difference in Number	Difference in Percent
75	135	60	+80%
Number of Census Places in CD6 in Maryland's 2011 Congressional Plan			
Data From Census Report	Data in Morrison Supplemental Declaration	Difference in Number	Difference in Percent
147	122	25	-17%
Sources: Morrison Supplemental Declaration, Unnumbered Table, p 3; MARYLAND CONGRESSIONAL DISTRICTS BY PLACE," 108 th Congress, https://www2.census.gov/geo/relfiles/cd108th/MD/plc_c8_24.txt ; ; MARYLAND CONGRESSIONAL DISTRICTS BY PLACE," 113 th Congress, https://www2.census.gov/geo/relfiles/cdsld13/24/pl_cd_24.txt .			

TABLE A4
PERCENT OF SPLIT CENSUS PLACES: DATA IN MORRISON SUPPLEMENTAL
DECLARATION COMPARED TO CORRECTED DATA

Data in Morrison Supp. Declaration 2001 Plan		Corrected Data 2001 Plan		Comparison
# of Census Places	% of Split Census Places (4/135)	# of Census Places	% of Split Census Places (4/75)	Difference
135	3%	75	5%	+2%
# of Census Places	% of Split Census Places (13/122)	# of Census Places	% of Split Census Places (13/147)	Difference
122	11%	147	9%	-2%
Sources: Morrison Supplemental Declaration, Unnumbered Table, p 3; MARYLAND CONGRESSIONAL DISTRICTS BY PLACE," 108 th Congress, https://www2.census.gov/geo/relfiles/cd108th/MD/plc_c8_24.txt ; ; MARYLAND CONGRESSIONAL DISTRICTS BY PLACE," 113 th Congress, https://www2.census.gov/geo/relfiles/cdsld13/24/pl_cd_24.txt .				

**ALLAN J. LICHTMAN, CASES (DATES APPROXIMATE)
DEPOSITION, AFFIDAVIT, OR ORAL TESTIMONY**

Jason Gonzalez v. Michael J. Madigan (U.S. District Court for the Northern District of Illinois), 2019

Anne Harding v. County of Dallas, (U.S. District Court for the Northern District of Texas), 2018

Pico Neighborhood Association v. Santa Monica (State Superior Court, California), 2018

Benisek v. Lamone, (U.S. District Court, Maryland), 2017

Arizona Democratic Party v. Reagan (U.S. District Court, Arizona), 2017

Perez v. Abbott (U.S. District Court for the Western District of Texas), 2017

Terrebonne Parish NAACP v. Jindal (U.S. District Court for the Middle District of Louisiana), 2017

Feldman v. Arizona Secretary of State (U.S. District Court for the District of Arizona), 2016, 2017

Covington v. North Carolina (U. S. District Court Middle District of North Carolina) 2016

One Wisconsin Institute v. Nichols (United States District Court for the Western District of Wisconsin) 2016

Lee v. Virginia State Board of Elections (United States District Court for the Eastern District of Virginia) 2016

League of Women Voters v. Detzner, (Circuit Court for the Second Judicial Circuit, Leon County) 2015

North Carolina State Conference of the NAACP v. McCrory (U. S. District Court Middle District of North Carolina) 2015

Veasey v. Perry (U. S. District Court, Southern District of Texas, Corpus Christi Div.) 2014

Newton, et al. vs. Alabama (U. S. District Court, Alabama) 2013

North Carolina NAACP v. North Carolina (State Superior Court, North Carolina) 2013

Texas v. United States (Voter ID) (U. S. District Court, District of Columbia) 2012

Texas v. United States (Redistricting) (U. S. District Court, District of Columbia) 2012

Coalition for Equity and Excellence in Higher Education v. Maryland Higher Education Committee, et al. (U. S. District Court, Maryland) 2012, Remedy 2017.

Radogno, et al. v. Illinois State Board of Elections, et al. (U.S. District Court, Illinois) 2011

Committee for a Fair and Balanced Map, et al. v. Illinois State Board of Elections, et al. (U.S. District Court, Illinois) 2011

Perez, et al. v. Perry, et al. (U. S. District Court, Texas) 2011

United States vs. Demario James Atwater (U. S. District Court, North Carolina) 2010

Boddie v. Cleveland School Board, Mississippi (U.S. District Court, Mississippi) 2010

Esther V. Madera Unified School District (Superior Court, California) 2008

Negron v. Bethlehem Area School District (U.S. District Court, Pennsylvania) 2008

Farley v. City of Hattiesburg (U.S. District Court, Mississippi) 2008

Jamison v. City of Tupelo (U.S. District Court, Mississippi) 2005

Session v. Perry (U.S. District Court, Texas) 2003

Rodriguez v. Pataki (U.S. District Court, New York) 2003

Boddie v. Cleveland, Mississippi (U.S. District Court, Mississippi) 2003

Levy v. Miami-Dade County (U.S. District Court, Florida) 2002

Martinez v. Bush (U.S. District Court, Florida) 2002

Curry v. Glendening (Maryland, State Court) 2002

O'Lear v. Miller (U.S. District Court, Michigan) 2002

Campuzano v. Illinois Board of Election (U.S. District Court, Illinois) 2002

Vieth v. Commonwealth of Pennsylvania (U.S. District Court, Pennsylvania) 2002

Leroux v. Miller (Michigan, State Supreme Court) 2002

Balderas v. State of Texas (U.S. District Court, Texas) 2001

Del Rio v. Perry (Texas, State Court) 2001

Page V. Bartels (U.S. District Court, New Jersey) 2001

West v. Gilmore (Virginia, State Court), 2001

U.S. v. City of Santa Paula (California, U.S. District Court) 2001

NAACP v. Fordice (Mississippi, U.S. District Court) 2000

Voting Integrity Project v. Marc Fleisher (Arizona, U.S. District Court) 2000

Packingham v. Metropolitan Dade County (U.S. District Court, Florida) 1999

Houston v. Lafayette County (U.S. District Court, Northern District of Mississippi, Western District) 1991, 1998

Citizens to Establish a Reform Party in Arkansas v. Sharon Priest (U.S. District Court, Eastern District of Arkansas) 1996

National Coalition v. Glendenning (U.S. District Court, Maryland) 1996

Vecinos de Barrio Uno v. Holyoke (U.S. District Court, Massachusetts), 1996

Scott v. Florida Senate (U.S. District Court, Middle District of Florida) 1995

King v. Board of Elections (U.S. District Court, Northern District of Illinois) 1995

Vera v. Richards (U.S. District Court, Southern District of Texas) 1994

United States v. Jones (U.S. District Court, Southern District of Alabama) 1994

Johnson v. Miller (U.S. District Court, Southern District of Georgia, Augusta Division) 1994

Hays v. Louisiana (U.S. District Court, Western District of Louisiana, Shreveport Division) 1993

People Who Care v. Rockford Board of Education (U.S. District Court, Northern District of Illinois, Eastern Division) 1993

Republican Party of North Carolina v. Hunt (U.S. District Court, Eastern District of North Carolina, Raleigh District) 1993

Shaw v. Hunt (U.S. District Court, Eastern District of North Carolina, Raleigh District) 1993

Neff v. Austin (State of Michigan, Supreme Court) 1992

Terrazas v. Slagle (U.S. District Court, Western District of Texas, Austin Division) 1992

Gonzalez v. Monterey County (U.S. District Court, Northern District of California) 1992

DeGrandy v. Wetherell (U.S. District Court, Northern District of Florida, Tallahassee Division) 1992

NAACP v. Austin (U.S. District Court, Eastern District of Michigan, Eastern Division) 1992

Good v. Austin (U.S. District Court, Eastern District of Michigan, Southern Division) 1992

Ortiz v. City of Philadelphia (U.S. District Court, Eastern District of Pennsylvania) 1991-1993

FAIR v. Weprin (U.S. District Court, Northern District, of New York) 1992

Davis v. Chiles (U.S. District Court, Northern District of Florida) 1991

McDaniels v. Mehfoud (U.S. District Court, Eastern District of Virginia) 1991

Rollins v. Dallas County Commission (U.S. District Court, Southern District of Alabama) 1991-1992

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Jenkins v. Red Clay Consolidated School District (U.S. District Court, District of Delaware) 1991

Watkins v. Mabus (U.S. District Court, Southern District of Mississippi) 1991

Mena v. Richards (Hidalgo County Texas District Court) 1991

Republican Party of Virginia v. Wilder (U.S. District Court, Western District of Virginia) 1991

Nipper v. Chiles (U.S. District Court, Middle District of Florida) 1991-1994

Smith v. Board of Superivsors of Brunswick County (U.S. District Court, Eastern District of Virginia) 1991-1992

New Alliance Party v. Hand (U.S. District Court, Alabama) 1990

Concerned Citizens v. Hardee County (U.S. District Court, Florida) 1990

United Parents Association v. NYC Board of Elections (U.S. District Court, New York) 1990

Garza v. County of Los Angeles (U.S. District Court, California) 1990

Person v. Moore County (U.S. District Court, Middle District of North Carolina, Rockingham Division) 1989

Ewing v. Monroe County (U.S. District Court, Northern District of Mississippi) 1989

White v. Daniel (U.S. District Court, Eastern District of Virginia) 1989

Gunn v. Chickasaw County (U.S. District Court, Mississippi) 1989

SCLC v. State of Alabama (U.S. District Court, Middle District of Alabama, Northern Division) 1989-1995

Bradford County NAACP v. City of Starke (U.S. District Court, Middle District of Florida) 1988

PUSH v. Allain (U.S. District Court, Mississippi) 1988

Baltimore Neighborhoods, Inc. v. C.F. Sauers (U.S. District Court, Maryland) 1988

United States v. Wicomico County (U.S. District Court, Maryland) 1988

Metropolitan Pittsburgh Crusade v. City of Pittsburgh (U.S. District Court, Western District of Pennsylvania) 1987

McNeil v. City of Springfield (U.S. District Court, Central District of Illinois) 1987

Harper v. City of Chicago Heights (U.S. District Court, Northern District of Illinois) 1987-1993

Robinson v. City of Cleveland (U.S. District Court, Delta District of Mississippi) 1987

Martin v. Allain (U.S. District Court, Southern District of Mississippi) 1987

Smith v. Clinton (U.S. District Court, Eastern District of Arkansas) 1987

Burrell v. Allain (U.S. District Court, Southern District, of Mississippi) 1986

United States v. Dallas County (U.S. District Court, Southern District of Alabama) 1986

United States v. Marengo County (U.S. District Court, Southern District of Alabama) 1986

Jordan v. City of Greenwood (U.S. District Court, Mississippi) 1984

Johnson v. Halifax County (U.S. District Court, Eastern District of North Carolina) 1984

Anderson v. Celebreeze (U.S. District Court, Ohio) 1980

Curriculum Vitae

Allan J. Lichtman
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EDUCATION

BA, Brandeis University, Phi Beta Kappa, Magna Cum Laude, 1967

PhD, Harvard University, Graduate Prize Fellow, 1973

PROFESSIONAL EXPERIENCE

Teaching Fellow, American History, Harvard University, 1969-73

Instructor, Brandeis University, 1970, quantitative history.

Assistant Professor of History, American University, 1973-1977

Associate Professor of History, American University, 1977-1978

Professor of History, American University, 1979 –

Distinguished Professor, 2011 -

Expert witness in more than 90 redistricting, voting rights and civil rights cases

Associate Dean for Faculty and Curricular Development, College of Arts & Sciences, The American University 1985-1987

Chair, Department of History, American University, 1997- 2001

Regular political analyst for CNN Headline News, 2003-2006

HONORS AND AWARDS

Outstanding Teacher, College of Arts and Sciences, 1975-76

Outstanding Scholar, College of Arts and Sciences, 1978-79

Outstanding Scholar, The American University, 1982-83



Outstanding Scholar/Teacher, The American University, 1992-93 (Highest University faculty award)

Sherman Fairchild Distinguished Visiting Scholar, California Institute of Technology, 1980-81

American University summer research grant, 1978 & 1982

Chamber of Commerce, Outstanding Young Men of America 1979-80

Graduate Student Council, American University, Faculty Award, 1982

Top Speaker Award, National Convention of the International Platform Association, 1983, 1984, 1987

National Age Group Champion (30-34) 3000-meter steeplechase 1979

Eastern Region Age Group Champion (30-34) 1500 meter run 1979

Defeated twenty opponents on nationally syndicated quiz show, TIC TAC DOUGH, 1981

Listing in Marquis, WHO'S WHO IN THE AMERICA AND WHO'S WHO IN THE WORLD

McDonnell Foundation, Prediction of Complex Systems (\$50,000, three years), 2003-2005

Organization of American Historians, Distinguished Lecturer, 2004 -

Selected by the Teaching Company as one of America's Super Star Teachers."

Associate Editor, International Journal of Operations Research and Information Systems, 2008 -

Keynote Speaker, International Forecasting Summit, 2007 and 2008

Cited authoritatively by United States Supreme Court in statewide Texas Congressional redistricting case *LULAC v. Perry* (2006)

Interviews nominated by the Associated Press for the Edward R. Murrow Award for broadcasting excellence.

WHITE PROTESTANT NATION: THE RISE OF THE AMERICAN CONSERVATIVE MOVEMENT: Finalist for the 2008 National Book Critics Circle Award in general nonfiction.

Elected Member, PEN American Center, 2009

Appointed Distinguished Professor, 2011

FDR AND THE JEWS: Designated for Belknap Imprint of the Harvard University Press,

reserved for works of special distinction and lasting value; *New York Times* editors' choice book for 2013, submitted for Pulitzer Prize 2013, winner of Tikkun Olam Award for Holocaust Studies, winner of National Jewish Book Award in American Jewish Studies, finalist for Los Angeles Times Book Award in History.

THE CASE FOR IMPEACHMENT: Independent bookstore bestseller, Amazon.com bestseller in several academic categories, *Newsweek*, best new book releases, April 18, 2017.

Winner of the Alfred Nelson Marquis Life Time Achievement Award for top 5% of persons included in Marquis WHO'S WHO, 2018.

Listed by rise.global as # 85 among 100 most influential geopolitical experts in the world.

SCHOLARSHIP

A. Books

PREJUDICE AND THE OLD POLITICS: THE PRESIDENTIAL ELECTION OF 1928 (Chapel Hill: University of North Carolina Press, 1979)

PREJUDICE AND THE OLD POLITICS: THE PRESIDENTIAL ELECTION OF 1928 (Lanham, MD: Lexington Books, 2000), reprint of 1979 edition with new introduction.

HISTORIANS AND THE LIVING PAST: THE THEORY AND PRACTICE OF HISTORICAL STUDY (Arlington Heights, Ill.: Harlan Davidson, Inc., 1978, with Valerie French)

ECOLOGICAL INFERENCE (Sage Series in Quantitative Applications in the Social Sciences, 1978, with Laura Irwin Langbein)

YOUR FAMILY HISTORY: HOW TO USE ORAL HISTORY, PERSONAL FAMILY ARCHIVES, AND PUBLIC DOCUMENTS TO DISCOVER YOUR HERITAGE (New York: Random House, 1978)

KIN AND COMMUNITIES: FAMILIES IN AMERICA (edited, Washington, D. C.: Smithsonian Press, 1979, with Joan Challinor)

THE THIRTEEN KEYS TO THE PRESIDENCY (Lanham: Madison Books, 1990, with Ken DeCell)

THE KEYS TO THE WHITE HOUSE, 1996 EDITION (Lanham: Madison Books, 1996)

THE KEYS TO THE WHITE HOUSE, (Lanham: Lexington Books Edition, 2000)

THE KEYS TO THE WHITE HOUSE, POST-2004 EDITION (Lanham: Lexington Books Edition, 2005)

THE KEYS TO THE WHITE HOUSE, 2008 EDITION (Lanham: Rowman & Littlefield, 2008)

WHITE PROTESTANT NATION: THE RISE OF THE AMERICAN CONSERVATIVE MOVEMENT (New York: Grove/Atlantic Press, 2008)

THE KEYS TO THE WHITE HOUSE, 2012 EDITION (2012, Lanham: Rowman & Littlefield)

FDR AND THE JEWS, (Cambridge: Harvard University Press, Belknap Imprint, 2013, with Richard Breitman).

THE KEYS TO THE WHITE HOUSE, 2016 EDITION (Lanham: Rowman & Littlefield)

THE CASE FOR IMPEACHMENT (HarperCollins, April 2017, updated paperback January 2018)

THE EMBATTLED VOTE IN AMERICA: FROM THE FOUNDING TO THE PRESENT (Harvard University Press, 2018)

REPEAL THE SECOND AMENDMENT: THE CASE FOR A SAFER AMERICA (forthcoming, January 2020, St. Martin's Press)

Monographs:

"Report on the Implications for Minority Voter Opportunities if Corrected census Data Had Been Used for the Post-1990 Redistricting: States With The Largest Numerical Undercount," UNITED STATES CENSUS MONITORING BOARD, January 2001

"Report on the Racial Impact of the Rejection of Ballots Cast in the 2000 Presidential Election in the State of Florida," and "Supplemental Report," in VOTING IRREGULARITIES IN FLORIDA DURING THE 2000 PRESIDENTIAL ELECTION, United States Commission on Civil Rights, June 2001

B. Scholarly Articles

"The Federal Assault Against Voting Discrimination in the Deep South, 1957-1967," JOURNAL OF NEGRO HISTORY (Oct. 1969) REF

"Executive Enforcement of Voting Rights, 1957-60," in Terrence Goggin and John Seidel, eds., POLITICS AMERICAN STYLE (1971)

"Correlation, Regression, and the Ecological Fallacy: A Critique," JOURNAL OF INTERDISCIPLINARY HISTORY (Winter 1974) REF

"Critical Election Theory and the Reality of American Presidential Politics, 1916-1940," AMERICAN HISTORICAL REVIEW (April 1976) REF

"Across the Great Divide: Inferring Individual Behavior From Aggregate Data," POLITICAL METHODOLOGY (with Laura Irwin, Fall 1976) REF

"Regression vs. Homogeneous Units: A Specification Analysis," SOCIAL SCIENCE HISTORY (Winter 1978) REF

"Language Games, Social Science, and Public Policy: The Case of the Family," in Harold Wallach, ed., APPROACHES TO CHILD AND FAMILY POLICY (Washington, D. C.: American Association for the Advancement of Science, 1981)

"Pattern Recognition Applied to Presidential Elections in the United States, 1860-1980: The Role of Integral Social, Economic, and Political Traits," PROCEEDINGS OF THE NATIONAL ACADEMY OF SCIENCE (with V. I. Keilis-Borok, November 1981) REF

"The End of Realignment Theory? Toward a New Research Program for American Political History," HISTORICAL METHODS (Fall 1982)

"Kinship and Family in American History," in National Council for Social Studies Bulletin, UNITED STATES HISTORY IN THE 1980s (1982)

"Modeling the Past: The Specification of Functional Form," JOURNAL OF INTERDISCIPLINARY HISTORY (with Ivy Broder, Winter 1983) REF

"Political Realignment and 'Ethnocultural' Voting in Late Nineteenth Century America," JOURNAL OF SOCIAL HISTORY (March 1983) REF

"The 'New Political History': Some Statistical Questions Answered," SOCIAL SCIENCE HISTORY (with J. Morgan Kousser, August 1983) REF

"Personal Family History: A Bridge to the Past," PROLOGUE (Spring 1984)

"Geography as Destiny," REVIEWS IN AMERICAN HISTORY (September 1985)

"Civil Rights Law: High Court Decision on Voting Act Helps to Remove Minority Barriers," NATIONAL LAW JOURNAL (with Gerald Hebert, November 10, 1986).

"Tommy The Cork: The Secret World of Washington's First Modern Lobbyist," WASHINGTON MONTHLY (February 1987).

"Discriminatory Election Systems and the Political Cohesion Doctrine," NATIONAL LAW JOURNAL (with Gerald Hebert, Oct. 5, 1987)

"Aggregate-Level Analysis of American Midterm Senatorial Election Results, 1974-1986," PROCEEDINGS OF THE NATIONAL ACADEMY OF SCIENCES (Dec. 1989, with Volodia Keilis-Borok) REF

"Black/White Voter Registration Disparities in Mississippi: Legal and Methodological Issues in Challenging Bureau of Census Data," JOURNAL OF LAW AND POLITICS (Spring, 1991, with Samuel Issacharoff) REF

"Adjusting Census Data for Reapportionment: The Independent Role of the States," NATIONAL BLACK LAW JOURNAL (1991)

"Passing the Test: Ecological Regression in the Los Angeles County Case and Beyond," EVALUATION REVIEW (December 1991) REF

Understanding and Prediction of Large Unstable Systems in the Absence of Basic Equations," PROCEEDINGS OF THE INTERNATIONAL SYMPOSIUM ON CONCEPTUAL TOOLS FOR UNDERSTANDING NATURE (with V. I. Keilis-Borok, Trieste, Italy, 1991).

"The Self-Organization of American Society in Presidential and Senatorial Elections," in Yu. Krautsov, ed., THE LIMITS OF PREDICTABILITY (with V.I. Keilis-Borok, Nauka, Moscow, 1992).

"They Endured: The Democratic Party in the 1920s," in Ira Foreman, ed., DEMOCRATS AND THE AMERICAN IDEA: A BICENTENNIAL APPRAISAL (1992).

"A General Theory of Vote Dilution," LA RAZA (with Gerald Hebert) 6 (1993). REF

"Adjusting Census Data for Reapportionment: The Independent Role of the States," JOURNAL OF LITIGATION (December 1993, with Samuel Issacharoff)

"The Keys to the White House: Who Will be the Next American President?," SOCIAL EDUCATION 60 (1996)

"The Rise of Big Government: Not As Simple As It Seems," REVIEWS IN AMERICAN HISTORY 26 (1998)

"The Keys to Election 2000," SOCIAL EDUCATION (Nov/Dec. 1999)

"The Keys to the White House 2000," NATIONAL FORUM (Winter 2000)

"What Really Happened in Florida's 2000 Presidential Election," JOURNAL OF LEGAL STUDIES (January 2003) REF

"The Keys to Election 2004," SOCIAL EDUCATION (January 2004)

"History: Social Science Applications," ENCYCLOPEDIA OF SOCIAL MEASUREMENT (Elsevier, 2006)

"The Keys to the White House: Forecast for 2008," SPECIAL FEATURE, *FORESIGHT: THE INTERNATIONAL JOURNAL OF APPLIED FORECASTING* 3 (February 2006), 5-9 with

response: J. Scott Armstrong and Alfred G. Cuzan, "Index Methods for Forecasting: An Application to the American Presidential Elections."

"The Keys to the White House: Updated Forecast for 2008," *FORESIGHT; THE INTERNATIONAL JOURNAL OF APPLIED FORECASTING* 7 (Fall 2007)

"The Keys to the White House: Prediction for 2008," *SOCIAL EDUCATION* (January 2008)

"The Keys to the White House: An Index Forecast for 2008," *INTERNATIONAL JOURNAL OF FORECASTING* 4 (April-June 2008) REF

"The Updated Version of the Keys," *SOCIAL EDUCATION* (October 2008)

"Extreme Events in Socio-Economic and Political Complex Systems, Predictability of," *ENCYCLOPEDIA OF COMPLEXITY AND SYSTEMS SCIENCE* (Springer, 2009, with Vladimir Keilis-Borok & Alexandre Soloviev)

"The Keys to the White House: A Preliminary Forecast for 2012" *INTERNATIONAL JOURNAL OF INFORMATION SYSTEMS & SOCIAL CHANGE* (Jan.-March 2010) REF

"The Keys to the White House: Forecast for 2012," *FORESIGHT: THE INTERNATIONAL JOURNAL OF APPLIED FORECASTING* (Summer 2010)

"The Keys to the White House: Prediction for 2012," *SOCIAL EDUCATION* (March 2012)

"The Keys to the White House: Prediction for 2016," *SOCIAL EDUCATION* (February 2016)

"The Keys to the White House," *SOCIAL EDUCATION* (October 2016)

"The Keys to the White House: Forecast for 2016," *WORLD FINANCIAL REVIEW* (January-February 2016)

"Barack Obama" in James M. Banner, Jr., ed., *PRESIDENTIAL MISCONDUCT: FROM GEORGE WASHINGTON TO TODAY* (New Press, 2019)

"The Alternative-Justification Affirmative: A New Case Form," *JOURNAL OF THE AMERICAN FORENSIC ASSOCIATION* (with Charles Garvin and Jerome Corsi, Fall 1973) REF

"The Alternative-Justification Case Revisited: A Critique of Goodnight, Balthrop and Parsons, 'The Substance of Inherency,'" *JOURNAL OF THE AMERICAN FORENSIC ASSOCIATION* (with Jerome Corsi, Spring 1975) REF

"A General Theory of the Counterplan," *JOURNAL OF THE AMERICAN FORENSIC ASSOCIATION* (with Daniel Rohrer, Fall 1975) REF

"The Logic of Policy Dispute," JOURNAL OF THE AMERICAN FORENSIC ASSOCIATION (with Daniel Rohrer, Spring 1980) REF

"Policy Dispute and Paradigm Evaluation," JOURNAL OF THE AMERICAN FORENSIC ASSOCIATION (with Daniel Rohrer, Fall 1982) REF

"New Paradigms For Academic Debate," JOURNAL OF THE AMERICAN FORENSIC ASSOCIATION (Fall 1985) REF

"Competing Models of the Debate Process," JOURNAL OF THE AMERICAN FORENSIC ASSOCIATION (Winter 1986) REF

"The Role of the Criteria Case in the Conceptual Framework of Academic Debate," in Donald Terry, ed., MODERN DEBATE CASE TECHNIQUES (with Daniel Rohrer, 1970)

"Decision Rules for Policy Debate," and "Debate as a Comparison of Policy Systems," in Robert 2, ed., THE NEW DEBATE: READINGS IN CONTEMPORARY DEBATE THEORY (with Daniel Rohrer, 1975)

"A Systems Approach to Presumption and Burden of Proof;" "The Role of Empirical Evidence in Debate;" and "A General Theory of the Counterplan," in David Thomas, ed., ADVANCED DEBATE: READINGS IN THEORY, PRACTICE, AND TEACHING (with Daniel Rohrer, 1975)

"Decision Rules in Policy Debate;" "The Debate Resolution;" "Affirmative Case Approaches;" "A General Theory of the Counterplan;" "The Role of Empirical Evidence in Debate;" and "Policy Systems Analysis in Debate," in David Thomas, ed., ADVANCED DEBATE (revised edition, with Daniel Rohrer and Jerome Corsi, 1979)

C. Selected Popular Articles

"Presidency By The Book," POLITICS TODAY (November 1979) Reprinted: LOS ANGELES TIMES

"The Grand Old Ploys," NEW YORK TIMES
Op Ed (July 18, 1980)

"The New Prohibitionism," THE CHRISTIAN CENTURY (October 29, 1980)

"Which Party Really Wants to 'Get Government Off Our Backs'?" CHRISTIAN SCIENCE MONITOR Opinion Page (December 2, 1980)

"Do Americans Really Want 'Coolidge Prosperity' Again?" CHRISTIAN SCIENCE MONITOR Opinion Page (August 19, 1981)

"Chipping Away at Civil Rights," CHRISTIAN SCIENCE MONITOR Opinion Page (February 17, 1982)

"How to Bet in 1984. A Presidential Election Guide," WASHINGTONIAN MAGAZINE (April 1982) Reprinted: THE CHICAGO TRIBUNE

"The Mirage of Efficiency," CHRISTIAN SCIENCE MONITOR Opinion Page (October 6, 1982)

"For RIFs, It Should Be RIP," LOS ANGELES TIMES Opinion Page (January 25, 1983)

"The Patronage Monster, Con't." WASHINGTON POST Free For All Page (March 16, 1983)

"A Strong Rights Unit," NEW YORK TIMES Op Ed Page (June 19, 1983)

"Abusing the Public Till," LOS ANGELES TIMES Opinion Page (July 26, 1983)

The First Gender Gap," CHRISTIAN SCIENCE MONITOR Opinion Page (August 16, 1983)

"Is Reagan A Sure Thing?" FT. LAUDERDALE NEWS Outlook Section (February 5, 1984)

"The Keys to the American Presidency: Predicting the Next Election," TALENT (Summer 1984)

"GOP: Winning the Political Battle for '88," CHRISTIAN SCIENCE MONITOR, Opinion Page, (December 27, 1984)

"The Return of 'Benign Neglect'," WASHINGTON POST, Free For All, (May 25, 1985)

"Selma Revisited: A Quiet Revolution," CHRISTIAN SCIENCE MONITOR, Opinion Page, (April 1, 1986)

"Democrats Take Over the Senate" THE WASHINGTONIAN (November 1986; article by Ken DeCell on Lichtman's advance predictions that the Democrats would recapture the Senate in 1986)

"Welcome War?" THE BALTIMORE EVENING SUN, Opinion Page, (July 15, 1987)

"How to Bet in 1988," WASHINGTONIAN (May 1988; advance prediction of George Bush's 1988 victory)

"President Bill?," WASHINGTONIAN (October 1992; advance prediction of Bill Clinton's 1992 victory)

"Don't be Talked Out of Boldness," CHRISTIAN SCIENCE MONITOR, Opinion Page (with Jesse Jackson, November 9, 1992)

"Defending the Second Reconstruction," CHRISTIAN SCIENCE MONITOR, Opinion Page (April 8, 1994)

"Quotas Aren't The Issue," NEW YORK TIMES, Op Ed Page (December 7, 1994)

"History According to Newt," WASHINGTON MONTHLY (May, 1995)

"A Ballot on Democracy," WASHINGTON POST Op Ed (November 1, 1998)

"The Theory of Counting Heads vs. One, Two, Three," CHRISTIAN SCIENCE MONITOR Op Ed (June 22, 1999)

"Race Was Big Factor in Ballot Rejection, BALTIMORE SUN Op Ed (March 5, 2002)

"Why is George Bush President?" NATIONAL CATHOLIC REPORTER (Dec. 19, 2003)

"In Plain Sight: With the Public Distracted, George W. Bush is Building a Big Government of the Right," NEWSDAY, (August 7, 2005)

"Why Obama is Colorblind and McCain is Ageless," JEWISH DAILY FORWARD (June 26, 2008)

"Splintered Conservatives McCain," POLITICO (June 24, 2008)

"Will Obama be a Smith or a Kennedy," NATIONAL CATHOLIC REPORTER (October 17, 2008)

"What Obama Should Do Now," POLITICO (Jan. 22, 2010)

"Why Democrats Need Hillary Clinton in 2016," THE HILL, June 11, 2014

"How Corporations Buy Our Government," THE HILL, July 1, 2014

"Who Rules America," THE HILL, August 12, 2014

"The End of Civil Discourse?" THE HILL, September 10, 2014

"Pass the Ache Act and Stop Destroying Appalachia?" THE HILL, October 28, 2014

"Democrats Have No One to Blame But Themselves," THE HILL, November 7, 2014

“Donald Trump’s Best Friend: Bernie Sanders,” THE HILL March 10, 2016

“Trump Had One Thing Right About Abortion,” THE HILL, April 1, 2016

“What is so Progressive About Sanders’ Old-Fashioned Protectionism,” April 7, 2016

“Sanders is Only Helping Trump by Staying in Race,” THE HILL, June 30, 2016

“7 Pieces of Advice for Hillary Clinton,” THE HILL, July 25, 2016

“Donald Trump’s Call For Russia To Hack Hillary Clinton’s Email Is A New Low For American Politics — And Maybe A Crime, NEW YORK DAILY NEWS, July 27, 2016

“Here’s the Big Speech Clinton Needs to Make,” THE HILL, September 9, 2016

“The Real Story Behind Trump’s Tax Returns,” THE HILL, October 3, 2016

“Trump is Establishment No Matter What He Says,” THE HILL, October 12, 2016

“Trump Brings the Big Lie About Voter Fraud,” THE HILL, October 19, 2016

“How a New Clinton Presidency Will Change American Politics Forever,” THE HILL, October 22, 2016

“The Media is Rigging the Election by Reporting WikiLeaks Emails,” THE HILL, October 26, 2016

“Why James Comey Must Resign Now,” THE HILL, November 3, 2016

“Why Trump is Vulnerable to Impeachment,” USA TODAY, April 18, 2017

“Donald Trump Meet the Real Andrew Jackson,” THE HILL, May 5, 2017

“Why Does Trump’s Voter Fraud Commission Really Wants Your Personal Voter Information,” THE HILL, August 3, 2017

“Trump is a Lot Closer to Being Impeached, TIME.COM, November 2, 2017

“American Democracy Could be at Risk in the 2018 Elections,” VICE December 20, 2017

“We are One Tantrum Away From Accidental War With North Korea,” THE HILL, January 25, 2018

“Democrats Can’t Survive on Anti-Trumpism Alone,” TIME.COM, January 28, 2018

“Don’t Expect the Mueller Investigation to End Anytime Soon,” VICE March 21, 2018

“President Trump Faces Political Disaster if he Tries to Fire Mueller,” THE HILL April 5, 2018

“Framers Fail: Voting is a Basic Right But They Didn’t Guarantee it in the Constitution,” USA TODAY, September 26, 2018

Suppressing Voting Rights is as Old as the Republic, But the Tactics Change,” ZOCALO, October 8, 2018

“Voter Fraud Isn’t a Problem in America. Low Turnout Is,” WASHINGTON POST, Made for History, October 22, 2018

“Here are five ways a Democratic US House might try to impeach Donald Trump,” LONDON SCHOOL OF ECONOMICS, US CENTRE, October 26, 2018.

“The Midterm Results Will Reveal What Drives Voters: A Love or Hate of Trump,” THE GUARDIAN, November 5, 2018

“Unless Democrats Find a 2020 Candidate Like Beto O’Rourke, Trump May Well Be Set to Win” THE DAILY CALLER, November 7, 2018

“Why Nancy Pelosi Should be the Next Speaker, FORTUNE, November 27, 2018

“Its Well Past Time to Restructure the U.S. Senate,” DAILY CALLER, December 4, 2018

“The Seven Crucial Takeaways From William Barr’s Confirmation Hearings,” SPECTATOR USA, January 16, 2019

“Did Democrats Forfeit, 2020” THE HILL March 14, 2019

“Barr’s ‘Summary’ Of The Mueller Report Hardly Vindicates Trump,” DAILY CALLER, March 25, 2019

“Collusion and Obstruction by Trump remain Open Questions after Attorney General’s ‘Summary’ of the Mueller Report,” ARTSFORUM, March 26, 2019

“21 Questions for Robert Mueller,” THE HILL, April 24, 2019

With U.S. Representative Al Green, “Congress Has a Duty to go Through With the Impeachment and Trial of Donald Trump,” THE HILL May 17, 2019

“If Democrats Want to Beat Trump, They Need to Take off the Gloves in the Primary,” GQ June 26, 2019

Bi-weekly column, THE MONTGOMERY JOURNAL, GAZETTE 1990 - 2013

Election-year column, REUTERS NEWS SERVICE 1996 & 2000

Contributor: THE HILL, 2014-present

D. Video Publication

"Great American Presidents," The Teaching Company, 2000.

TEACHING

Ongoing Courses

The History of the U. S. I & II, The Emergence of Modern America, The U. S. in the Twentieth Century, United States Economic History, Historiography, Major Seminar in History, Graduate Research Seminar, Colloquium in U. S. History Since 1865, The American Dream, The Urban-Technological Era, Senior Seminar in American Studies, Seminar in Human Communication.

New Courses: Taught for the first time at The American University

Quantification in History, Women in Twentieth Century American Politics, Women in Twentieth Century America, Historians and the Living Past (a course designed to introduce students to the excitement and relevance of historical study), **Historians and the Living Past for Honors Students**, How to Think: Critical Analysis in the Social Sciences, Pivotal Years of American Politics, **Government and the Citizen (Honors Program)**, Introduction to Historical Quantification, Public Policy in U. S. History, **Honors Seminar in U.S. Presidential Elections**, America's Presidential Elections, What Is America?, **Honors Seminar on FDR, Jews, and the Holocaust**.

TELEVISION APPEARANCES

More than 1,000 instances of political commentary on NBC, CBS, ABC, CNN, C-SPAN, FOX, MSNBC, BBC, CBC, CTV, NPR, VOA, and numerous other broadcasting outlets internationally, including Japanese, Russian, Chinese, German, French, Irish, Austrian, Australian, Russian, Swedish, Danish, Dutch, and Middle Eastern television.

Regular political commentary for NBC News Nightside.

Regular political commentary for Voice of America and USIA.

Regular political commentary for America's Talking Cable Network.

Regular political commentary for the Canadian Broadcasting System.

Regular political commentary for CNN, Headline News

Consultant and on-air commentator for NBC special productions video project on the history of the American presidency.

CBS New Consultant, 1998 and 1999

Featured appearances on several History Channel specials including *The Nuclear Football* and *The President's Book of Secrets*.

RADIO SHOWS

I have participated in many thousands of radio interview and talk shows broadcast nationwide, in foreign nations, and in cities such as Washington, D. C., New York, Atlanta, Chicago, Los Angeles and Detroit. My appearances include the Voice of America, National Public Radio, and well as all major commercial radio networks.

PRESS CITATIONS

I have been cited many hundreds of times on public affairs in the leading newspapers and magazines worldwide. These include, among many others,

New York Times, Washington Post, USA Today, Los Angeles Times, Wall Street Journal, Miami Herald, Washington Times, St. Louis Post Dispatch, Christian Science Monitor, Philadelphia Inquirer, Time, Newsweek, Business Week, Le Monde, Globe and Mail, Yomuri Shimbun, Die Welt, El Mundo, and South China Post, among others.

SELECTED CONFERENCES, PRESENTATIONS, & LECTURES: UNITED STATES

Invited participant and speaker, Bostick Conference on Fogel and Engerman's TIME ON THE CROSS, University of South Carolina, November 1-2, 1974

"Critical Election Theory and the Presidential Election of 1928," Annual Meeting of the American Historical Association, December 1974

"A Psychological Model of American Nativism," Bloomsberg State Historical Conference, April 1975

"Methodology for Aggregating Data in Education Research," National Institute of Education, Symposium on Methodology, July 1975, with Laura Irwin

Featured Speaker, The Joint Washington State Bicentennial Conference on Family History,

October 1975

Featured Speaker, The Santa Barbara Conference on Family History, May 1976

Chair, The Smithsonian Institution and the American University Conference on Techniques for Studying Historical and Contemporary Families, June 1976

Panel Chair, Sixth International Smithsonian Symposium on Kin and Communities in America, June 1977

"The uses of History for Policy Analysis," invited lecture, Federal Interagency Panel on Early Childhood Research, October 1977

Invited participant, Conference on "Child Development within the Family - Evolving New Research Approaches," Interagency Panel of the Federal Government for Research and Development on Adolescence, June 1978

Commentator on papers in argumentation, Annual Meeting of the Speech Communication Association, November 1978

Commentator on papers on family policy, Annual Meeting of the American Association for the Advancement of Science, Jan. 1979

"Phenomenology, History, and Social Science," Graduate Colloquium of the Department of Philosophy," The American University, March 1979

"Comparing Tests for Aggregation Bias: Party Realignment of the 1930's," Annual Meeting of the Midwest Political Science Association March 1979, with Laura Irwin Langbein

"Party Loyalty and Progressive Politics: Quantitative Analysis of the Vote for President in 1912," Annual Meeting of the Organization of American Historians, April 1979, with Jack Lord II

"Policy Systems Debate: A Reaffirmation," Annual Meeting of the Speech Communication Association, November 1979

"Personal Family History: Toward a Unified Approach," Invited Paper, World Conference on Records, Salt Lake City, August 1980

"Crisis at the Archives: The Acquisition, Preservation, and Dissemination of Public Documents," Annual Meeting of the Speech Communication Association, November 1980

"Recruitment, Conversion, and Political Realignment in America: 1888- 1940," Social Science Seminar, California Institute of Technology, April 1980

"Toward a Situational Logic of American Presidential Elections," Annual Meeting of the Speech Communication Association, November 1981

"Political Realignment in American History," Annual Meeting of the Social Science History Association, October 1981

"Critical Elections in Historical Perspective: the 1890s and the 1930s," Annual Meeting of the Social Science History Association, November 1982

Commentator for Papers on the use of Census data for historical research, Annual Meeting of the Organization of American Historians, April 1983

"Thirteen Keys to the Presidency: How to Predict the Next Election," Featured Presentation, Annual Conference of the International Platform Association, August 1983, Received a Top Speaker Award

"Paradigms for Academic Debate," Annual Meeting of the Speech Communication Association, November 1983

Local Arrangements Chair, Annual Convention of the Social Science History Association, October 1983

"Forecasting the Next Election," Featured Speaker, Annual Convention of the American Feed Manufacturers Association, May 1984

Featured Speaker, "The Ferraro Nomination," Annual Convention of The International Platform Association, August 1984, Top Speaker Award

"Forecasting the 1984 Election," Annual Convention of the Social Science History Association Oct. 1984,

Featured Speaker, "The Keys to the Presidency," Meeting of Women in Government Relations October 1984

Featured Speaker, "The Presidential Election of 1988," Convention of the American Association of Political Consultants, December 1986

Featured Speaker, "The Presidential Election of 1988," Convention of the Senior Executive Service of the United States, July 1987

Commentary on Papers on Voting Rights, Annual Meeting of the American Political Science Association, September 1987.

Commentary on Papers on Ecological Inference, Annual Meeting of the Social Science History Association, November 1987.

Featured Speaker: "Expert Witnesses in Federal Voting Rights Cases," National Conference on Voting Rights, November 1987.

Featured Speaker: "The Quantitative Analysis of Electoral Data," NAACP National Conference on Voting Rights and School Desegregation, July 1988.

Panel Chair, "Quantitative Analysis of the New Deal Realignment," Annual Meeting of the Social Science History Association, Nov. 1989.

Keynote Speaker, Convocation of Lake Forest College, Nov. 1989.

Featured Speaker, The American University-Smithsonian Institution Conference on the Voting Rights Act, April 1990

Panel Speaker, Voting Rights Conference of the Lawyer's Committee for Civil Rights Under Law, April 1990

Panel Speaker, Voting Rights Conference of the NAACP, July 1990

Panel Speaker, Voting Rights Conference of Stetson University, April 1991

Panel Chair, Annual Meeting of the Organization of American Historians, April, 1992

Panel Speaker, Symposium on "Lessons from 200 Years of Democratic Party History, Center for National Policy, May 1992

Olin Memorial Lecture, U.S. Naval Academy, October 1992

Commentator, Annual Meeting of the Organization of American Historians, April, 1993

Panel presentation, Conference on Indian Law, National Bar Association, April 1993

Feature Presentation, Black Political Science Association, Norfolk State University, June 1993

Feature Presentation, Southern Regional Council Conference, Atlanta Georgia, November, 1994

Master of Ceremonies and Speaker, State of the County Brunch, Montgomery County, February, 1996

Feature Presentation, Predicting The Next Presidential Election, Freedom's Foundation Seminar on the American Presidency, August 1996

Feature Presentation, Predicting The Next Presidential Election, Salisbury State College, October 1996

Feature Presentation on the Keys to the White House, Dirksen Center, Peoria, Illinois, August, 2000

Feature Presentation on American Political History, Regional Conference of the Organization of American Historians, August 2000

Testimony Presented Before the United States Commission on Civil Rights Regarding Voting Systems and Voting Rights, January 2001

Testimony Presented Before the United States House of Representatives, Judiciary Committee, Subcommittee on the Constitution, February 2001

Testimony Presented Before the United States Senate, Government Operations Committee, Regarding Racial Differentials in Ballot Rejection Rates in the Florida Presidential Election, June 2001

Testimony Presented Before the Texas State Senate Redistricting Committee, Congressional Redistricting, July 2003

Testimony Presented Before the Texas State House Redistricting Committee, Congressional Redistricting, July 2003

American University Honors Program Tea Talk on the Election, September 2004

Feature Presentation, The Keys to the White House, International Symposium on Forecasting, June 2006.

Feature Presentation, The Keys to the White House, International Symposium on Forecasting, New York, June 2007.

Keynote Speaker, Hubert Humphrey Fellows, Arlington, Virginia, 2007-2013

Feature Presentation, Forecasting 2008, Annual Meeting of the American Political Science Association, Chicago, August 2007

Keynote Speaker, International Forecasting Summit, Orlando, Florida, February 2008.

Feature Presentation on the Keys to the White House, Senior Executive's Service, Washington, DC, June 2008

Feature Presentation, American Political History, Rockford Illinois School District, July 2008

American University Honors Program Tea Talk on the Election, September 2008

Featured Lecture, Keys to the White House, American Association for the Advancement of

Science, Washington, DC, September 2008

Keynote Speaker, International Forecasting Summit, Boston, September 2008

Keynote Lecture, Hubert Humphrey Fellows, Arlington, Virginia October 2008

Featured Lectures, Keys to the White, Oklahoma Central and East Central Universities, October 2008

Bishop C. C. McCabe Lecture, "Seven Days until Tomorrow" American University, October 28, 2008

Featured Lecture, WHITE PROTESTANT NATION, Eisenhower Institute, December 2008

American University Faculty on the Road Lecture, "Election 2008: What Happened and Why?" Boston, February 2009

Critic Meets Author Session on WHITE PROTESTANT NATION, Social Science History Association, November 2009

American University Faculty on the Road Lecture, "The Keys for 2012" Chicago, April 2010

Keynote Speaker, Hubert Humphrey Fellows, Arlington, Virginia October, 2010, 2011

Panel Participant, Search for Common Ground, Washington, DC, April 2011

Presentation, The Keys to the White House, International Symposium on Forecasting, June 2012

SELECTED CONFERENCES, PRESENTATIONS, & LECTURES: INTERNATIONAL

Featured Speaker, World Conference on Disarmament, Moscow, Russia, November 1986

Delegation Head, Delegation of Washington Area Scholars to Taiwan, Presented Paper on the promotion of democracy based on the American experience, July 1993

Lecture Series, American History, Doshisha University, Kyoto, Japan, December 2000

Lectures and Political Consultation, Nairobi, Kenya, for RFK Memorial Institute, October 2002

Featured Lectures, US Department of State, Scotland and England, including Oxford University, University of Edinburg, and Chatham House, June 2004

Keynote Speech, American University in Cairo, October 2004

Feature Presentation on the Keys to the White House, University of Munich, June 2008

Featured Lectures, US Department of State, Russia, Ukraine, Slovenia, Austria, and Romania, 2008-2010

Paper Presentation, Fourth International Conference on Interdisciplinary Social Science, Athens, Greece, July 2009

Featured Lectures, US Department of State, India, Korea, and Belgium 2012

Panel Speaker, Economic Forum, Krynica, Poland, 2013

DEPARTMENTAL AND UNIVERSITY SERVICE

Department of History Council 1973 -

Undergraduate Committee, Department of History 1973-1977

Chair Undergraduate Committee, Department of History 1984-1985

Graduate Committee, Department of History, 1978-1984

Freshman Advisor, 1973-1979

First Year Module in Human Communications, 1977-1979

University Committee on Fellowships and Awards 1976-1978

University Senate 1978-1979, 1984-1985

University Senate Parliamentarian and Executive Board 1978-1979

Founding Director, American University Honors Program, 1977-1979

Chair, College of Arts and Sciences Budget Committee 1977-1978, 1982-1984

University Grievance Committee, 1984-1985

Member, University Honors Committee 1981-1982

College of Arts and Sciences Curriculum Committee 1981-1982

Jewish Studies Advisory Board, 1982-1984

Mellon Grant Executive Board, College of Arts & Sciences, 1982-1983

Chair, College of Arts and Sciences Faculty Colloquium, 1983

Chair, College of Arts and Sciences Task Force on the Department of Performing Arts, 1984-1985

Local Arrangements Chair, National Convention of the Social Science History Association, 1983

Chair, Rank & Tenure Committee of the Department of History, 1981-1982, 1984-1985

Board Member, Center for Congressional and Presidential Studies, The American University, 1988-1989

Chair, Graduate Committee, Department of History, 1989 - 1991

Chair, Distinguished Professor Search Committee 1991

Member, College of Arts & Sciences Associate Dean Search Committee, 1991

Board Member, The American University Press, 1991-1995

Chair, Subcommittee on Demographic Change, The American University Committee on Middle States Accreditation Review 1992-1994

Member, Dean's Committee on Curriculum Change, College of Arts and Sciences 1992-1993

Member, Dean's Committee on Teaching, College of Arts and Sciences 1992

Co-Chair, Department of History Graduate Committee, 1994-1995

Vice-Chair, College of Arts & Sciences Educational Policy Committee, 1994-1995

Elected Member, University Provost Search Committee, 1995-1996

Chair, Search Committee for British and European Historian, Department of History, 1996

Department Chair, 1999-2001

CAS Research Committee, 2006-2007

University Budget and Benefits Committee, 2008

Chair, Personnel Committee, Department of History, 2010-11, 2012-13

Chair, Term Faculty Search Committee, Department of History, 2011

OTHER POSITIONS

Director of Forensics, Brandeis University, 1968-71

Director of Forensics, Harvard University, 1971-72

Chair, New York-New England Debate Committee, 1970-71

Historical consultant to the Kin and Communities Program of the Smithsonian Institution
1974-1979

Along with general advisory duties, this position has involved the following activities:

1. directing a national conference on techniques for studying historical and contemporary families held at the Smithsonian in June 1976.
2. chairing a public session at the Smithsonian on how to do the history of one's own family.
3. helping to direct the Sixth International Smithsonian Symposium on Kin and Communities in America (June 1977).
4. editing the volume of essays from the symposium.

Consultant to John Anderson campaign for president, 1980.

I researched and wrote a study on "Restrictive Ballot Laws and Third-Force Presidential Candidates." This document was a major component of Anderson's legal arguments against restrictive ballot laws that ultimately prevailed in the Supreme Court (Anderson v. Celebrezze 1983). According to Anderson's attorney: "the basis for the majority's decision echoes the themes you incorporated in your original historical piece we filed in the District Court."

Statistical Consultant to the George Washington University Program of Policy Studies in Science and Technology, 1983

I advised researchers at the Policy Studies Program on the application of pattern recognition techniques to their work on the recovery of communities from the effects of such natural disasters as earthquakes and floods.

Consultant to the New York City Charter Revision Commission, 2000-2006

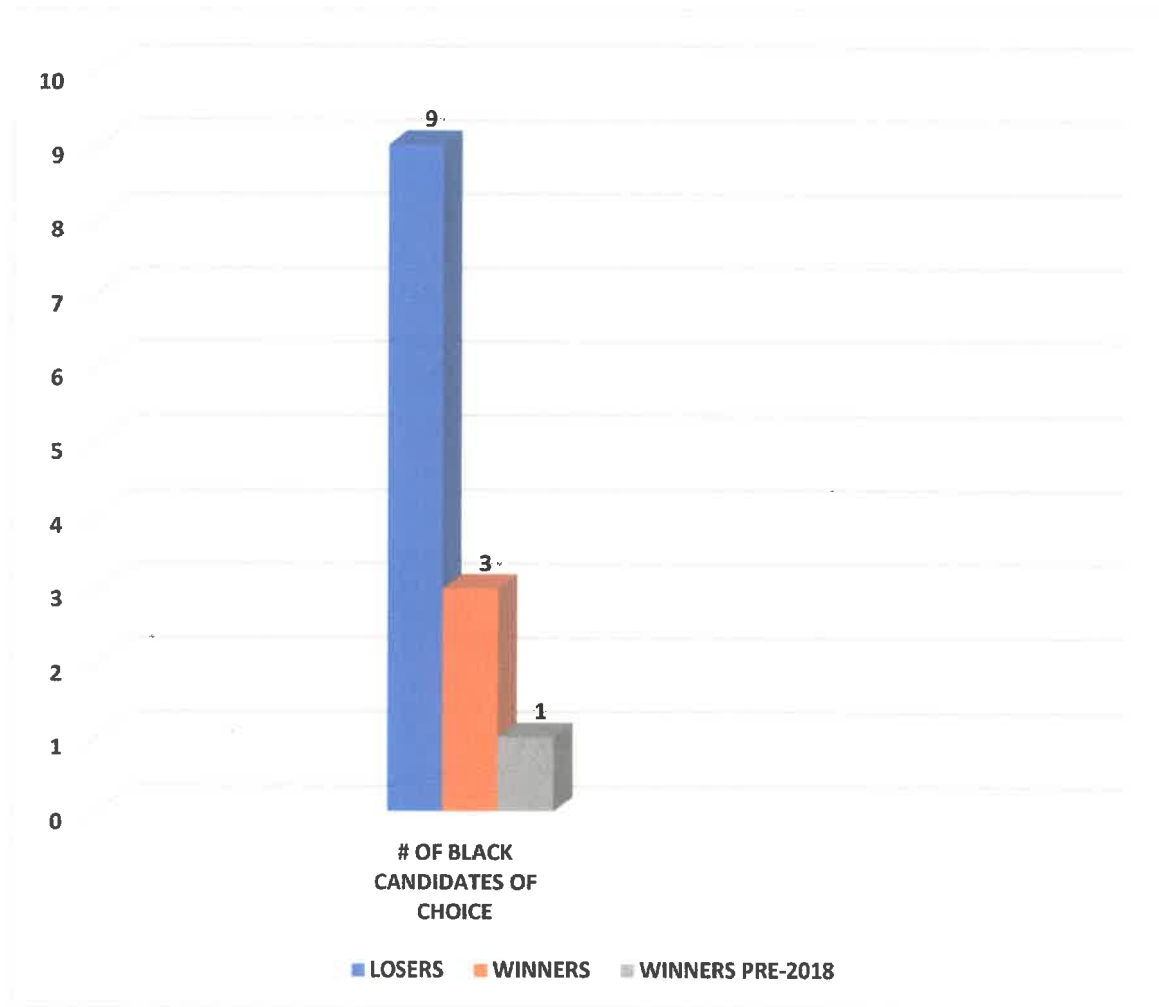
I analyzed the implications of non-partisan elections for voting rights issues for the Charter Revision Commissions appointed by mayors Rudy Giuliani and Michael Bloomberg.

TABLE R3
AFRICAN AMERICAN CITY COUNCIL CANDIDATES IN VIRGINIA BEACH, 2008 TO 2018, REVISION
OF KIDD TABLES 1 AND 2

Black Candidate of Choice of Black Voters, Would Have Won With Black Votes	Outcome	Not Candidate of Choice of Black Voters	Outcome
Wooten 2018	Won	Wray 2018	Lost
Rouse 2018	Won	Bright 2018	Lost
Ross-Hammond 2016	Lost	Furman 2016	Lost
Cabiness 2014	Lost	Burton 2014	Lost
Furman 2014*	Lost	Smith 2012	Lost
Ross-Hammond 2012	Won	Furman 2010	Lost
Sherrod 2011	Lost	Jackson 2008	Lost
Jackson 2010 **	Lost		
Cabiness 2010 **	Lost		
Bullock 2010	Lost		
Allen 2008	Lost		
Flores 2008	Lost		
<p>* This was the second choice of black voters in a two-seat at-large election. ** These were the first and second choices of black voters in a two-seat at-large election.</p>			



CHART R3: VICTORIES AND DEFEATS FOR BLACK CITY COUNCIL CANDIDATES OF CHOICE OF BLACK VOTERS, VIRGINIA BEACH, 2008-2018



EXHIBIT

6

Planet Depos, LLC

Gerald L. Harris

From: Danielle Lang <dlang@campaignlegalcenter.org>
Sent: Thursday, September 05, 2019 10:32 AM
To: Christopher S. Boynton; Gerald L. Harris; Joseph M. Kurt
Cc: Annabelle Harless; Gerry Hebert; Christopher Lamar
Subject: Fw: Fw: Holloway - Data referenced in Spencer rebuttal report but not provided
Attachments: coalition_estimates_se.xlsx

See attached.



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From: Doug Spencer <dougspencer@gmail.com>
Sent: Thursday, September 5, 2019 12:46 AM
To: Danielle Lang <dlang@campaignlegalcenter.org>
Cc: Annabelle Harless <aharless@campaignlegalcenter.org>
Subject: Re: Fw: Holloway - Data referenced in Spencer rebuttal report but not provided

See attached.

Doug



Year	Seat	Candidate	Threshold	Black		Hispanic		Asian	
				est.	se	est.	se	est.	se
Minority Candidates									
2018	At-large	Rouse	45.2	83.0	6.4	33.3	21.0	53.0	15.2
2018	Centerville	Wooten	62.1	90.3	14.9	79.9	25.1	73.4	18.4
2016	Kempsville	Ross-Hammond	59.4	81.2	4.7	49.0	18.8	26.2	10.7
2014	Rose Hall	Cabiness	48.3	70.2	4.5	13.0	11.0	9.4	7.4
2012	Kempsville	Ross-Hammond	32.2	82.6	4.4	53.9	20.5	33.6	12.6
2011	At-large	Sherrod	37.0	90.2	4.3	49.5	22.0	27.2	12.7
2010	At-large	Jackson	44.8	52.9	2.5	11.6	8.6	6.9	5.0
2010	Princess Anne	Bullock	54.4	79.0	3.6	67.1	17.7	87.9	8.1
2008	At-large	Allen	44.1	79.4	3.4	77.0	14.6	29.8	9.9
2008	Kempsville	Flores	48.7	52.9	2.4	40.4	13.0	33.9	7.0
White Candidates									
2018	At-large	White	45.2	61.1	10.7	53.3	40.4	19.6	20.4
2014	Princess Anne	Henley	76.7	62.4	2.8	69.5	12.4	82.9	6.9
2010	At-large	Bellitto	44.8	8.4	2.3	45.2	12.2	47.2	6.4